

HUMAN RIGHTS AND THE RULE OF LAW IN CHINA

HEARING BEFORE THE CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA ONE HUNDRED NINTH CONGRESS SECOND SESSION SEPTEMBER 20, 2006

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HUMAN RIGHTS AND RULE OF LAW IN CHINA

WEDNESDAY, SEPTEMBER 20, 2006

CONGRESSIONAL-EXECUTIVE
COMMISSION ON CHINA,
Washington, DC.

The hearing was convened, pursuant to notice, at 10:09 a.m., in room 138, Dirksen Senate Office Building, Hon. Chuck Hagel (Chairman of the Commission) presiding.

Present: Senators Brownback and Martinez; Representatives Leach (Co-Chairman of the Commission), Pitts, Aderholt, Levin (Ranking Member of the Commission), and Honda; Steven J. Law, Deputy Secretary of Labor, and Franklin L. Lavin, Under Secretary of Commerce.

OPENING STATEMENT OF HON. CHUCK HAGEL, A U.S. SENATOR FROM THE STATE OF NEBRASKA, CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Chairman HAGEL. Good morning. The Congressional-Executive Commission on China issues a report each year to the Congress and to the President on human rights conditions and the development of the rule of law in China.

In connection with today's release of the 2006 Annual Report, the Commission has asked a distinguished group of witnesses to assess the current state of civil rights and criminal defense; freedom of expression; and efforts to adopt democratic institutions of governance, implement legislative reform, and improve the environment for domestic and international civil society groups in China. The Commission will also hear the perspective of the witnesses on how the United States might best engage with the Chinese Government through dialogue on human rights and rule of law issues.

In its 2006 Annual Report, the Commission expresses deep concern that some Chinese Government policies designed to address growing social unrest and bolster Communist Party authority are resulting in a period of declining human rights for China's citizens.

The Commission identified limited improvements in the Chinese Government's human rights practices in 2004, but backward-stepping government decisions in 2005 and 2006 are leading the Commission to reevaluate the Chinese leadership's commitment to additional human rights improvements in the near term. In its 2005 Annual Report, the Commission highlighted increased government restrictions on Chinese citizens who worship in state-controlled venues or write for state-controlled publications. These restrictions remain in place, and in some cases, the government has strengthened their enforcement.

The Commission notes the progress that the Chinese Government has made over the past 25 years in beginning to build a political system based on the rule of law and on respect for basic human rights. The twin demands of social stability and continued economic progress have spurred legal reforms that may one day be the leading edge of constraints on the arbitrary exercise of state power. The government's achievements in the economic realm are impressive, none more so than its success in lifting more than 400 million Chinese citizens out of extreme poverty since the early 1980s.

While all of these changes are important, the gap between forward-looking economic freedoms and a backward-looking political system remains significant. There are leaders now within China who comprehend the need for change and who understand that inflexibility, secretiveness, and a lack of democratic oversight pose the greatest challenges to continued development.

These leaders will need to gather considerable reformist courage to overcome obstacles and push for continued change. Such changes will not occur overnight, but rather in ways that Chinese society, culture, infrastructure, and institutions must be prepared for and willing to accept.

To help us better understand human rights conditions and the development of the rule of law in China, we turn to our witnesses this morning.

Professor Jerome A. Cohen is a Professor of Law at the New York University School of Law; an Adjunct Senior Fellow on Asia at the Council of Foreign Relations; and Of Counsel at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison. Professor Cohen is a leading expert on the Chinese legal system and the legal aspects of the international relations of East Asia. As Director of East Asia Legal Studies at Harvard Law School from 1964 to 1979, Professor Cohen pioneered the study of East Asian legal systems in American legal curricula. He has published numerous books and articles on Chinese law, including "Contract Laws of the People's Republic of China," "The Criminal Process in the PRC: 1949 to 1968," and "The Plight of China's Criminal Defense Lawyers."

After Professor Cohen, we will hear from Mr. John Kamm. Mr. Kamm is Executive Director of The Dui Hua Foundation; a member of the Board of Directors for the National Committee on U.S.-China Relations; and Director of Stanford University's Project on Human Rights Diplomacy. Since 1990, Mr. Kamm has been an advocate on behalf of prisoners of conscience in China and has made more than 70 trips to Beijing in an effort to engage the Chinese Government in a dialogue on human rights. He was granted the Eleanor Roosevelt Human Rights Award by President George W. Bush in December 2001, and a MacArthur Fellowship in September 2004. Mr. Kamm was the Hong Kong representative of the National Council for U.S.-China Trade from 1976 to 1981, and was President of the American Chamber of Commerce in Hong Kong in 1990.

Dr. Minxin Pei will provide perspectives on democratic governance and development of civil society. Dr. Pei is Senior Associate and Director of the China Program at the Carnegie Endowment for International Peace. He is an expert on China, U.S.-China rela-

tions, Taiwan, East Asia, and the development of democratic political systems. Dr. Pei is the author of numerous books and articles on China, including “China’s Governance Crisis,” “Rebalancing United States-China Relations,” and “Future Shock: The WTO and Political Change in China.” In his most recent book, “China’s Trapped Transition: The Limits of Developmental Autocracy,” Dr. Pei examines the sustainability of the Chinese Communist Party’s reform strategy—pursuing pro-market policies under one-party rule.

Mr. Xiao Qiang will share his expertise on freedom of expression in China. Mr. Xiao is Director of the China Internet Project at the University of California at Berkeley. He is a recipient of the MacArthur Fellowship and is currently teaching classes on “new media and human rights in China” at the University of California at Berkeley. Mr. Xiao was the Executive Director of Human Rights in China from 1991 to 2002. He spoke at each meeting of the U.N. Commission on Human Rights from 1993 to 2001, and has lectured on the promotion of human rights and democracy in China in over 40 countries. Mr. Xiao currently runs the China Digital Times Internet news portal, and is a weekly commentator for Radio Free Asia.

We welcome our distinguished panel of witnesses this morning.

At this point I would ask my distinguished colleague, the Co-Chairman of this Commission, Representative Jim Leach, for his comments. Then I would ask for comments from other colleagues on the Commission before we hear from the witnesses.

Representative Leach.

[The prepared statement of Senator Hagel appears in the Appendix.]

OPENING STATEMENT OF HON. JIM LEACH, A U.S. REPRESENTATIVE FROM THE STATE OF IOWA, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

Representative LEACH. Well, thank you, Chairman Hagel. I have a long statement. I would simply ask unanimous consent to put it in the record, and make two very quick observations.

Perspective is awfully difficult to bring to events of this nature and assessments of the nature that the Commission is obligated to make. From any historical viewpoint, China is obviously economically better off than it has ever been. From a freedom point of view, it is probably as well off as it has ever been.

On the other hand, quite clearly there have been some steps back in the last several years that are of serious dimensions and they have to be noted, and we are obligated to note that.

In this regard, I personally want to tip my hat to the staff that has been so responsible for putting together this report. We have a first-class professional staff, non-ideological, Chinese language-trained, and we are very proud of the work product that they have produced and the efforts that they have undertaken.

With that, I would yield back the balance of my time.

[The prepared statement of Representative Leach appears in the Appendix.]

Chairman HAGEL. Co-Chairman Leach, thank you.

One of our distinguished members of the Commission is the Under Secretary of Commerce and the former U.S. Ambassador to Singapore.

Mr. Lavin, do you have any comments?

Mr. LAVIN. No opening statements, Mr. Chairman, but to associate myself with your opening statement and with that of Congressman Leach as well.

[The prepared statement of Mr. Lavin appears in the Appendix.]

Chairman HAGEL. Mr. Lavin, thank you.

Also, another distinguished member of our Commission, Representative Joseph Pitts of Pennsylvania, has joined us. Mr. Pitts has been actively engaged in this Commission.

Congressman Pitts, do you have a statement?

Representative PITTS. Mr. Chairman, I would just like to say this is an excellent report and I would like to commend the staff for the good work they have done here. I want to thank the witnesses for their expertise and for coming today. I yield back.

Chairman HAGEL. Representative Pitts, thank you.

The recognition of the efforts of the staff of this Commission is appropriate. The staff has been under the leadership of Dr. David Dorman and Mr. John Foarde, who deserve a considerable amount of attention and appreciation, as well as all of the members of the Commission staff. I think our Commission is unanimous in its praise of the good work of our staff on the report that was released today.

We have just been joined by another distinguished member of our Commission, Mr. Aderholt. Would you care to make a statement? Welcome.

Representative ADERHOLT. Thank you. It is good to be here this morning. I do not have anything right now. I may submit something for the record. But I look forward to the testimony this morning. Thank you.

Chairman HAGEL. Representative Aderholt, thank you.

With that, let me now ask our distinguished witnesses if they would proceed. I would ask them to proceed in the order in which I introduced each of you. We will begin with you, Professor Cohen. Welcome. Thank you.

STATEMENT OF JEROME A. COHEN, PROFESSOR OF LAW, NEW YORK UNIVERSITY SCHOOL OF LAW, NEW YORK, NY

Mr. COHEN. Thank you, Senator Hagel. I am very glad to see good attendance today, to see your colleague, Congressman Leach, again, Secretary Lavin, and Congressmen Pitts and Aderholt.

We are very happy, those of us in the China field, with what this Commission has done. I think hearings such as this, and reports—I have already read this report and it is a very able, comprehensive, balanced view that will be of inestimable help to people in the news media, as well as scholars of China. My hope is that some day this report, which I know is translated into Chinese at least in part, could be made available in China.

Now, setting the tone for today's hearing is a challenge. It has been over a year since I last appeared here, and the last year has not been a good one for the subjects of our concern, the rule of law and human rights—human rights, in the sense of political and reli-

gious freedoms, protection against arbitrary criminal punishment, the development of fair and independent courts, and the growth of a free and vigorous legal profession.

I will speak briefly about some recent developments. Many of us have hoped that there would be a new Criminal Procedure Law out in China before the Olympics in 2008. There are so many issues, which I list in my formal presentation, that cry out for amendment, revision, clarification, and improvement. It now looks like prospects for the new criminal procedure laws coming out in the near future are receding. That is too bad. The idea was to lay the groundwork for China's ratification of the U.N. Convention on Civil and Political Rights. China, as you know, signed onto the ICCPR in 1998. It has been eight years. The hope was, and many Chinese experts as recently June were still confident, that China would ratify that Convention by the time of the Olympics.

I think there is a desire on the part of the Chinese leadership in principle, although they have a hard time living up to it in practice, that China be seen as a fully civilized member of the world community by 2008. A new Criminal Procedure Law consistent with the ICCPR would be part of that, but that prospect, too, seems to be fading.

Now, I had at least hoped that the Chinese National People's Congress would abolish the notorious sanction called "Reeducation Through Labor" that allows the police to put anyone away for three or four years with no review by the prosecutor's office, no review by the courts, and no review by anybody else. That has been one of the most effective and feared police sanctions for almost the entire history of the People's Republic of China. There has been a bill before the National People's Congress for over two years that would abolish, or at least substantially reform, that sanction. That, too, seems dead in the water, at least for now.

So the National People's Congress cannot be looked to, for the next year at least, for much action on the questions at issue. Fortunately, the Supreme People's Court of China is trying to fill the gap.

There has always been a kind of contest between the National People's Congress and the Supreme People's Court, how much terrain the Supreme Court can cover. They are not allowed to make constitutional decisions, but they do interpret their power of interpretation broadly. Right now, they are focusing on trying to improve procedures for death penalty cases in China.

As you know, China is infamous, even more than the United States, for the numbers of people it puts to death. We do not know the figures—it is a closely guarded secret—but between 8,000 to 10,000 people a year are executed. Now, people know the procedures have been abysmal for trying these people and reviewing their cases. The Supreme Court of China is trying on its own now to make important improvements. For that, they have to hire 300 or 400 new judges—that gives you some idea of how many cases there are to review—who have got to take part in the review process, and they have got to improve the trial processes. They are making some progress. It is slow. It is difficult. We do not know how well they will do.

Many of us are cooperating, to the extent that they welcome it, in this effort. But it is the only game in town right now in terms of law reform of the administration of criminal justice in China.

Now, there have been some disgraceful criminal cases that many of you know about. The Washington Post, New York Times, or other news media have been full of various cases. I have been involved in two of them in the last year.

One is the famous blind man, who is what we would call a “bare-foot lawyer.” He is not a lawyer, but he is self-taught, and has been a social/legal activist. He has been locked up now and sentenced to four years and three months in prison. I brought along a T-shirt that shows this man. He was a State Department visitor—that is how I met him—in 2002. When you meet him, you are very much moved. He is like a Chinese version of, a legalistic Gandhi. This is a very sincere, very brilliant, very courageous, determined person, and he is paying the price for it today. Other T-shirts were confiscated by the Chinese police the day I got mine last June.

I also have taken part in the famous case of Zhao Yan, a New York Times staff person in the Times’ Beijing Bureau, who has now been sentenced to three years in prison after another trial that can only be regarded as a farce, and after highly illegal—according to Chinese law—pre-trial detention, interrogation, et cetera.

These cases, it is sad to say, the Supreme Court does not do anything about in its supervisory powers. Wholesale, they are doing pretty well. Retail, they have a lot to cover and, I think, to make up for.

One of the interesting phenomena is that, despite these actions, the Communist Party itself is showing itself increasingly sensitive to legal considerations. The Party plays a very important, but little-noticed, role in criminal justice. If important people in the Party are going to be interrogated, investigated for corruption, for example, the Party usually locks these people up long before they get to the police or formal criminal process. The Party can hold somebody for as long as they want, sometimes years. The Party, in principle, recognizes a few protections, but in practice these people are held incommunicado. The result is that the elite of China, China’s 70 million Party members, often have fewer rights in protecting themselves against arbitrary prosecution than ordinary members of the public.

But it is good that the Party is showing some interest in ideas of judicial due process and other protections. I think this tells you something about a new generation that is coming along. The Party has to look more legitimate to its members and they want to seem less arbitrary.

Another problem I want to talk about is restraints on lawyers. I am not going to repeat what I have said here before about the many obstacles and sanctions imposed against vigorous defense lawyers in China. This year has been even worse. Lawyers have been physically beaten and abused on many occasions. They have been deprived of their license to practice law. Some have been prosecuted. Mr. Gao Zhisheng, one of the most outspoken, is currently under investigation and detained for unspecified criminal activities.

A lot of these people and their families, lawyers as well as their political dissident clients, are subject to blockades of their home.

There is no legal authority for this. In June, I wanted to pay my respects in Shanghai to a former lawyer who had been disbarred and sentenced to jail for three years and who had just come out of jail. I went to his home. He invited me for dinner. Police prevented me from going. When I said, "What authority have you got for interfering with my right to see him and his right to see me?" the only answer I got after repeated questions, was "*Women shi jingcha*." "We are the police. We do not need any authority." More than that, they showed me their badge. This is what is happening. People are being subjected to a range of illicit measures that simply are not justified according to Chinese law.

Now, what we find is that there are also other restraints on lawyers. Lawyers in the news media are getting too close for comfort from the leadership's point of view. My blind man friend's real offense was not using the law in court to give the government difficulty, but it was contacting the Washington Post through me. It was really going on the Internet through the help of Chinese lawyers in Beijing. They do not want people letting the foreign press know what is really going on. They are also sensitive because many public interest lawyers in China now are going out of their way to help groups that are subject to various forms of suppression and have collective grievances.

In order to stop this, on March 20, the All China Lawyer's Association, under pressure from the Ministry of Justice, put out a new, so-called "Guiding Opinion" that really wants to turn lawyers, in cases involving 10 or more people as their client, into instruments of the public security forces and the government.

The idea that has been gradually taking root in China since the 1980s that a lawyer is the representative of his client, he is not a state legal worker, has now been gone back on. They are trying to convert these lawyers into state legal workers again who do not have full loyalty to their client, but really have to have absolute loyalty to the state. This is a very sinister development.

Well, what can we say about the future? Are there any grounds for optimism? Beneath the top leadership in China you have a marvelous group of able, determined, scholarly, law-reforming people, hundreds of thousands of these people if you count all the members of the different professions, from staff of the legislature, to people working in the Ministry of Justice, even the Ministry of Public Security has some, and certainly in the law schools, among the defense bar, you have a lot of idealistic people trying for law reform. We hope that in the future these people can be heard from.

The immediate future depends on the 17th Communist Party Congress that will be held a year from now. There will be personnel changes then. We do not know who will be added to the Politburo, who will be subtracted. There are rumors that one member recently added to the Politburo, the Minister of Public Security, who is the only representative of the legal community in the Politburo, will be promoted to the Standing Committee of the Politburo and placed in charge of the Party Political-Legal Committee that leads all legal agencies in China in a coordinated way. He may also become the Chairman of the Party's Central Discipline and Inspection Commission. If this happens, Minister Zhou Yongkang will have unprecedented power in the administration of justice.

My hope is that the president of the Supreme Court, Xiao Yang, will be promoted to the Politburo. He should have been put in at the 16th Party Congress. The fact is that there is no representative who represents the importance of law among all these engineers who run the Politburo, and therefore the development of China. But we do not know. A lot depends on future personnel changes.

Chairman HAGEL. Professor Cohen, may I interrupt just for a moment? If it is acceptable to you, we can include your full statement in the record. I want to make sure we have adequate time for questions. We have a large panel today and I would ask, again, if it is acceptable, if I could move to the next witness. We will place your complete statement in the record.

Mr. COHEN. Could I make one long sentence, and then I will quit?

Chairman HAGEL. Yes.

Mr. COHEN. Because this concerns you people. What can we do? I think the Congress should expand its current funding for support for the rule of law in China. The critical thing is that you must make it clear to the Department of State that you support fundamental research on problems such as, "how did other countries around China develop genuine judicial independence? Why did it fail in previous efforts in China?" Right now, they say they cannot support research, only training and exchanges. My argument is that this is all very vital, but it helps to know what you really should be training people about in order to get maximum bang for the buck. So I think research is fundamental. We do not know enough. And just as we used to have arguments whether the U.S. Government should support basic research in the sciences that was solved long ago. I think we should now solve the question whether you should support basic research on how to promote the administration of justice in China. Thank you.

[The prepared statement of Mr. Cohen appears in the Appendix.]

Chairman HAGEL. Professor Cohen, thank you very much.

Mr. KAMM.

STATEMENT OF JOHN KAMM, EXECUTIVE DIRECTOR, THE DUI HUA FOUNDATION, SAN FRANCISCO, CA

Mr. KAMM. Chairman Hagel, distinguished Members of the Congressional-Executive Commission on China. It is always a special occasion for me to address the Congress of the United States.

I began my work in the field of human rights in China in May 1990, the month that I made my first intervention on behalf of a political prisoner and the month in which I gave my first testimony to Congress on China's human rights record and U.S.-China relations.

I am especially pleased to be here for today's important hearing. I was one of the first advocates of establishing this Commission, and Dui Hua enjoys a close relationship with it. The Chairman and other Commissioners have been of great help to our work. Thank you.

For several years, Dui Hua has been conducting a worldwide search for the names of individuals detained in political cases in China since 1980. Our database has information on more than 11,500 such individuals, of whom about 3,100 are currently in prisons, labor camps, or other places of detention. Many whose names

are in the database are not imprisoned, though they are hardly free. We know of but a small percentage of the population of those persecuted in China for political and religious reasons.

We use the database to raise the names of detainees with Chinese officials and make lists that are submitted to departments of the Chinese Government. A key recipient of our lists has been the Ministry of Justice, which runs China's prisons and reeducation through labor camps.

Through a unique relationship spanning a period of 15 years, requests for information on about 1,000 individuals detained in political cases have been submitted. Information on hundreds of prisoners, many of whose names we discovered, has been obtained. Lives have been saved.

The Chinese Government has now decided to close this channel. The Ministry of Justice has said it will not meet me any more unless I agree to stop raising names and submitting lists. This, I cannot agree to do. The Justice Ministry's position overturns years of cooperation in prisoner accounting, cooperation that has enjoyed the support of leaders, officials, and legislators in both countries, and especially in the Congress of the United States.

It violates China's own policy of conducting human rights dialogues on the basis of mutual respect, and represents a setback to the principles of transparency and open governance. It directly contradicts President Hu Jintao's recent statement that China is prepared to enhance dialogue and exchanges with the United States on human rights. Eliminating a unique program of cooperation is not enhancement, it is a big step backward.

Dui Hua will always find ways to put cases we uncover in front of the Chinese Government. We will work more closely with the United Nations, with the governments of countries that have human rights dialogues with China, with cities and states that have sister relationships in China, and, most importantly, with members of this Commission. We will find ways to contact Chinese NGOs working to build a civil society.

Dui Hua looks forward to the day when Chinese NGOs will themselves be able to work effectively to secure information and better treatment for political and religious prisoners and deal with other human rights issues.

Dui Hua also looks forward to the resumption of the U.S.-China official dialogue on human rights. When and if the two governments resume the dialogue, we will be ready with a list.

Various reasons have been put forward for why the Chinese government has clamped down on information relating to political dissent and public protest, both of which are growing at least as fast as the much-vaunted economy. I think the most plausible explanation has to do with the senior leadership's fear of a "Color Revolution" that would topple the rule of the Chinese Communist Party, just as other revolutions have done to regimes in the Middle East, Central Asia, and the former states of the Soviet Union.

Dui Hua is an NGO monitoring political crime and public protest. That it should be targeted in the campaign to oppose the "Color Revolution" when so many other smokeless guns are being silenced is not surprising. But what makes Dui Hua's work seem especially threatening is that it has worked for, and then pub-

licized, the release of dissidents and activists, not a mere handful, but hundreds.

Our work has had the cumulative effect of helping to reduce the fears and inhibitions of those standing up for their rights. The Chinese Communist Party has a problem: the Party is more and more afraid of the people, but the people are less and less afraid of it.

Here is how the New York Times' Nicholas Kristoff puts it:

The basic problem for Mr. Hu is that incentives have changed over the last half-dozen years, encouraging more challenges to the system. As one dissident told me, "In the past, getting in trouble would mean a 10-year term in prison, alone and forgotten. Now if I go to prison," he said, "I will get out after a year and I will be a hero. True, some people are sent to prison longer, like my colleague Zhao Yan, but few people seem much intimidated."

Mr. Chairman, I would like to sum up. In Britain's darkest hour, Winston Churchill addressed a group of officers aboard a warship. He asked what you would get if you put the most gallant sailor, the most intrepid airman, and the most audacious soldier together at the same table.

Today we might ask what you'd get if you put the most gallant rights defender, the most intrepid underground priest, and the most audacious journalist together at the same table in China. The answer would be the same: "the sum of their fears."

Those inside and outside China who labor to bring rule of law and respect for human rights to that great country have achieved something of special value. By doggedly seeking justice for those imprisoned for what they believe in, we have helped reduce the fears of those working for change. This is our legacy, and it is one that your Commission can be proud of. Now is the time to redouble your efforts.

Thank you.

[The prepared statement of Mr. Kamm appears in the Appendix.]

Chairman HAGEL. Mr. Kamm, thank you. I would remind each of the witnesses again that your full statements will be placed in the record.

I have been asked by one of our members, Senator Brownback, if he could interrupt the proceedings for a couple of minutes to make a statement. He is supposed to be in a Judiciary Committee hearing now, and I have agreed with that request. So at this point we will go to Senator Brownback, and then come back to the witnesses. Thank you.

**STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR
FROM THE STATE OF KANSAS, MEMBER, CONGRESSIONAL-
EXECUTIVE COMMISSION ON CHINA**

Senator BROWNBACK. Thank you, Mr. Chairman. Senator Hagel, thank you very much. I am sorry to do this. For other causes and calls that I have, I will not take too long. I do ask that my full statement be submitted into the record.

Chairman HAGEL. It will be.

Senator BROWNBACK. Mr. Chairman, I think we are at a very important juncture here. I think there has been a lot of progress that has taken place in China, and I outline that in my statement. But I think what you are seeing now is the summation of the fears of

the Chinese Government. Instead of there being the rule of law, they are using the rule by law.

Professor Cohen was saying that he asked why could he not go see his friend? Well, because “I am the policeman.” That is the rule by law, not the rule of law. I think we are seeing a fearful government resort to the use of rule by law to sustain their own power. We are seeing more and more of this suppression and oppression taking place.

To me, this is the time for us to push more aggressively and more specifically and directly at the Communist government. That is the group that is doing this. That is the group that is using the law to sustain their own power and ignoring the law when it does not sustain their own power. I think we need to have a discussion of the regression by the Chinese Communist government. Mr. Kamm, who I have met with over the years—and I admire greatly your work, and more, even the people on the ground in China that you work with, and people that have gone to prison—who have done a great deal to try to connect the United States and China, and working that back and forth, are now being shut out by this country. I think it is important for us to go directly at the regime.

One final point on this. This is a bit of a sidebar, but I think it is also an indicator of the problems you get when a regime operates the way this one does. I have worked with North Korean refugees for some period of time. We have had the first group come out from North Korea, being accepted into the United States as refugees. The women in this group say, 100 percent of the women that walk out of North Korea into China are trafficked. They are caught by somebody local in China, they are told by their Chinese captors, their hunters, that “you do what I say or we are turning you in to the Chinese authorities, who will send you back to North Korea and you will end up in the gulag, and you know what happens there.” One hundred percent of the women are caught, then sold to some Chinese man who tells them the exact same thing: “do what I say or else I am turning you in to the authorities. You will be sent back to North Korea to the gulag, and you know what happens there.”

This is because China is refouling and breaking an international human rights obligation that they have, and then you get this trafficking that takes place because of that. It is the regime that is doing this.

I only point it out as one of a number of cases of what you are seeing of when a country violates its own laws, the human rights of its own citizens or people that are there, that you continue to see the deterioration taking place. That is why I applaud this hearing.

I applaud the Report for its footnoting, but I think we are weak on our conclusions. I think we need to press the Chinese Government, the Communist government, much more. That is why my vote will be against the report, although I do appreciate the effort of pulling together, I think, a very strong narrative in this report. I think it is very good in that result, in that part. But I think the recommendations need to go right at what the government itself is doing and really press that government for more change.

Mr. Chairman, I want to thank you as well, again, for allowing me to break in at this point to say that. I appreciate that, and appreciate the hearing.

[The prepared statement of Senator Brownback appears in the Appendix.]

Chairman HAGEL. Senator Brownback, thank you.

We will resume hearing from our witnesses.

Dr. Pei.

**STATEMENT OF MINXIN PEI, DIRECTOR, CHINA PROGRAM,
CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE,
WASHINGTON, DC**

Mr. PEI. Thank you, Mr. Chairman and members of the Commission. I feel very honored to be here today as a witness to this Commission. This Commission's work is very important for those who want to see a China that is not only economically prosperous, but politically democratic.

Like many observers of developments in China, I have watched with increasing concern recent trends that indicate deterioration in human rights conditions and stagnant progress toward strengthening the rule of law. While today's China is a much kinder and gentler nation than it was before the reform period began, and we should give the Chinese people and pro-reform forces in the Chinese Government all the credit for achieving such amazing progress in poverty reduction and expansion of personal freedoms, we must also recognize that the pace of improving political rights for Chinese citizens and strengthening the institutions of the rule of law has lagged significantly behind the speed of economic progress.

In recent years, the process of political liberalization has stalled, even as the Chinese economy continues its rapid rise. In today's testimony I will briefly focus on the underlying causes for the deterioration of political rights and stalled progress in China.

In my judgment, recent symptoms of rising social unrest may be only a partial explanation for the government's intensified efforts of social and political control. The more important causes for China's backslide on human rights and the rule of law originate from a combination of factors that, together, reduce the ruling elite's incentive to pursue political reform, while increasing their capacity for political control.

China has fallen into a classic transition trap at the moment. The current stage of transition, with half-finished economic reform and minimal political reform, provides an ideal situation for the ruling elites who can maintain power with a mixture of economic performance, political cooptation of new social elites, and the increasingly effective application of political control.

Economically, the strong growth record since Tiananmen has reduced the pressure on the Chinese Government to pursue democratic reforms. Indeed, it has even provided justifications for a hardline position on human rights.

More importantly, because under one-party rule China's political elites can easily convert their political power into economic wealth, they have even less incentive to permit greater political competition. It is obvious that democratic reforms will threaten not only

their political monopoly, but also their newly acquired economic wealth.

At the same time, the Chinese Government has been adapting itself very skillfully to new socioeconomic changes. It has done so, first, by including social elites such as professionals and intellectuals into the ruling circle. In addition, it has also managed to co-opt new social elites, especially private entrepreneurs. This strategy has eliminated challenges to the Party's authority from the most well-endowed and capable elements in Chinese society.

Over the last decade, the Chinese Government has also greatly improved its capacity for suppressing both political dissent and social unrest. It has done so by heavy investment in law enforcement and technology. These strong capabilities, unfortunately, seem to have convinced the Chinese leadership that a tough approach to dealing with political dissent and social frustrations is a more effective way than political negotiation, compromise, and democratic reforms.

As long as this combination of factors persists, it is very unlikely that human rights will improve in China, nor is it likely that the rule of law will be strengthened.

But the picture is not all that gloomy. Despite the Chinese Government's unrelenting efforts to control the mass media and limit the growth of democratic forces, Chinese society continues its amazing change. At the moment, it is not possible to form a broad-based democratic opposition to challenge the authority of the party, but the spread of personal freedom, the information revolution, and market forces is creating a more conducive environment for social pluralism in the long run.

So, finally, I would like to strongly applaud the professionalism and outstanding work of the staff of the Commission that has produced this document. The situation in China is unsatisfactory at the moment. I think the only means available to us to pressure the Chinese Government is through combined efforts from Congress and the Administration, and this report is a great example of that kind of effort.

Thank you very much.

[The prepared statement of Mr. Pei appears in the Appendix.]

Chairman HAGEL. Dr. Pei, thank you.

Mr. Xiao.

STATEMENT OF XIAO QIANG, DIRECTOR, CHINA INTERNET PROJECT, THE GRADUATE SCHOOL OF JOURNALISM, UNIVERSITY OF CALIFORNIA AT BERKELEY, BERKELEY, CA

Mr. XIAO. Thank you, Mr. Chairman and distinguished Commission members. It is a privilege for me to speak in front of this important Commission, and alongside of my distinguished fellow panelists.

I particularly want to echo what my colleague Pei Minxin just said of his analysis of China's political situation. I fully support that.

Today, my talk will focus on two things, the growing information flow on the Chinese Internet, and the Chinese Government's intensified control in this regard.

In China, every number is huge. On the Internet, over 130 million Chinese are online, 440 million cell phones are in use. Now I am talking about the blogosphere. In January 2005, China estimated to have around 500,000 bloggers. By the latest survey, it is 28 million blogs. This significant growth is mainly due to the fact that the main China Internet portals, such as Sina.com and Sohu.com, are actively promoting blog applications among the 130 million Chinese Internet users.

But it is worth noting that all these Internet companies are funded through venture capital from the United States and are listed, or aiming to be listed, on the NASDAQ stock market.

The unintended effect is that Chinese citizens now have a platform to create a public space to discuss political and public affairs, as well as creatively expressing themselves and form social networks online or offline.

Mr. Chairman, online discussions are currently becoming a real phenomena that is starting to have real agenda-setting power. The Chinese Government has devoted enormous financial resources to set out government-sponsored Web sites at all levels of government. Before the blogs, about 10 percent of Web sites were directly set up by the government. However, the problem is that the Chinese netizens do not believe those propaganda efforts, and the blogs and BDS are far more popular than government Web sites.

This leads to my second point. The Chinese Government has intensified control of the Internet. This effort is well-documented. I particularly want to praise the Commission's report this year, which has excellent documentation of the control measures.

But I want to just focus on two telling examples of this important component of this Internet control, as has been said by my co-panelist, John Kamm, and that is about fear.

In January 2006, the Shenzhen Public Security Bureau created animated images of a pair of police officers name "Jingjing" and "Chacha." They sound like panda names, but they are two virtual police images, floating online on the Web sites. Anybody can click through to the police Web site and can report anybody else. According to the Chinese official e-Governance Net Web site, it said, "The main function of Jingjing and Chacha is to intimidate. . . . The Internet has always been monitored by the police. The significance of Jingjing and Chacha's appearance is to publicly remind all netizens to be conscious of the safe and healthy use of the Internet, to self-regulate their online behavior, and maintain harmonious Internet order together."

Another important method to monitor Internet activities is to use real-name registration. In June 2006, the Ministry of Information Industry ordered all weblogs and Web sites to register with government or face closure. This registration will impose a true-name system on Web site owners. After registration, one must display an electronic verification mark in a specific location on the Web site, and it must also link to the Ministry's supervision system for making inquiries. By doing so, the identity of a Web site owner will be immediately clear.

These examples reveal that the Chinese Government has learned to turn the digital and transparent properties of Internet technology into a surveillance and intimidation tool to control citizens'

behavior. The underlying mechanism works to instill fear among netizens that they are being watched.

Of course, these new technology-empowered control mechanisms are only effective when they are used together with intimidation in the physical space. In the past two weeks, three cyber-dissidents have been arrested.

Mr. Chairman, distinguished Commission members, let me put it this way. For China's one-party state, controlling the nature of the information available to its citizens has never been more difficult. Tens of millions of netizens are now empowered by the new publication platform, and what is happening in the Chinese blogosphere is a power shift, not directly at the level of political institutions or law, but around the change of communication systems and ability to shape information and symbolic environment. But the long-term survival of the Chinese Communist Party's power monopoly regime also critically relies on its ideological work and the control of this environment.

In the near future, we will see more and more efforts by the Chinese Government to control the information flow, online or offline, under this control, using the mechanisms listed in the Commission's report and the examples I mentioned above. But a deeper problem is that the Chinese Communist Party itself is morally bankrupt and intellectually exhausted.

As Professor Cohen said, there is a younger generation with higher ideals. What are the ideals? The ideals are democracy, human rights, rule of law, those that we all believe in together. When they gradually rise into positions, and these ideals and ideas are being facilitated by the new emerging communication platforms, we can see, in long-term, the Chinese censors cannot stop the rise to a freer Chinese society.

Finally, I just want to say that the U.S. Government should be a more active player in the development and employment of anti-censorship technologies, which will not only help the Chinese people to gain direct access of information to the U.S. Government-sponsored Web sites, but also contribute to the greater information flow in Chinese cyberspace.

The Great Firewall, no matter how advanced its technology and how much fear the government is trying to instill, will crumble, and much sooner than the Great Wall. Thank you.

[The prepared statement of Mr. Xiao appears in the Appendix.]

Chairman HAGEL. Mr. Xiao, thank you. Thank you again to each of our witnesses for your helpful and enlightening testimony.

We have good representation on the Commission this morning, so I would suggest that we take, each of us, five minutes for our first round of questioning. We will stay as long as the witnesses will stay with us to answer questions, if that is acceptable. Thank you.

I will begin, Mr. Xiao, with your ending comments. I want to focus on the Chinese Government's blocking, in particular, of the Web sites of foreign news organizations and human rights organizations. As you probably know, in May of last year the Chinese Government began blocking this Commission's Web site from being viewed in China.

I have a two-part question. How does the Chinese Government determine which foreign Web sites are to be blocked?

Mr. XIAO. Essentially, they pay attention to the politically sensitive materials far more than any other Web sites, such as pornography, which they are only halfheartedly trying to block. For a particular Web site, the criteria is usually coming from Chinese language content, first. The Hong Kong news media, Taiwan news media, the BBC Chinese site, the Voice of America, Radio Free Asia, and the Chinese dissidents human rights organizations and other overseas publications.

Then, the second priority is English-language news media, but with content that they feel is "politically undesirable." I think the Commission Web site falls in that category. Particularly if you have your materials translated into Chinese, then it falls into the blacklist right away. The problem with that also is that there is no clear procedure. They never say which ones are blocked, and also once a Web site has been blocked, there is no way to get it off the blacklist either.

Chairman HAGEL. The second part of the question is this, what actions can the U.S. Government or the international community take to circumvent this government censorship?

Mr. XIAO. Fortunately, the Internet, by nature, is a decentralized technology. Those information packets can travel in every direction. The later applications of pure technologies and proxies are relatively easy and inexpensive to get around the firewall, as long as those applications are being more and more adopted by the Chinese netizens. We need a certain amount of financial resources to develop those technologies to support a number of those kinds of activities and projects, but the impact with this investment is totally worth it.

On the number, you will probably only see a small portion of Chinese Internet users actually using this technology to get around the firewall, only the tech-savvy ones, only the ones who use the Internet a lot. But these are the people who have a much larger audience in China, so you do not need 130 million Chinese people using this, all you need is 100,000 people actively using it. But these are the 100,000 people who are journalists, teachers, and freelance writers who have a greater impact on their opinion leaders in China's cyberspace.

Chairman HAGEL. Thank you.

Dr. Pei, given the current state of freedom of expression in China, and each of you have discussed this issue in some detail in your testimony this morning, how much freedom of expression and freedom of the press do you expect for the 2008 Beijing Olympics?

Mr. PEI. I think there will most likely be a period of intensified control around the Olympics that is for the purpose of maintaining stability, because it is crucial for the Chinese Government to maintain social and political order. Their mind-set is such that they believe control equals stability, so that is going to be expected.

However, if you look at the Chinese press as a whole, you will find that in a cultural sphere, and now increasingly in the business sphere, there is a lot more freedom. The sphere of control that the government continues to monitor and control very tightly is just strictly the political sphere.

Chairman HAGEL. Thank you. Mr. Kamm, the same question, if you would care to add anything to what you heard regarding the 2008 Beijing Olympics.

Mr. KAMM. I would agree with Dr. Pei. I think there will be an attempt to increase controls in the name of stability. I am not very confident that the Chinese Government is going to be very successful. I have heard various figures that 20,000 foreign journalists will be in the country. There will be a lot of reporting that those journalists do that have very little to do with the Olympics, per se.

As recently as a few weeks ago, the Chinese Government has once again stated that it will allow journalists freedom to move around the country and write about whatever they want. But I do anticipate that, in line with the current campaign against the "Color Revolutions," that they will, in fact, impose new strictures on the press and on foreign journalists.

Chairman HAGEL. Thank you.

Professor Cohen.

Mr. COHEN. It can be noted, however, that recently foreign journalists—regulations—some of them are being subjected to requests for strip searches and things of that nature.

The Foreign Correspondents Club of China is very concerned about it and has recently put out a special bulletin because so many foreign journalists have actually run into new restrictions in practice.

Chairman HAGEL. Thank you.

Congressman Leach.

Representative LEACH. Well, thank you, Mr. Chairman.

I want to raise kind of a bedeviling issue for us on tactics. I think we are obligated to record, to the greatest extent possible, every abuse of the human rights circumstance that we can discern. But then we have the problem of advocating for the individual. One has the sense that in the human rights arena, in many countries, over many years, advocacy from this country has been helpful. But one also has the sense, in the last two or three years in China, that if one takes a specific individual and advocates for that individual, it is counterproductive for that individual.

This raises a very interesting question of where we should come down on individual cases. I mean, that is, describing the big picture, with the reference to every individual's circumstance in a report is one thing. Going to an official and saying, "Individual XYZ should be taken out of jail," it seems that that causes a spine-strengthening on their side.

Do you have that sense, Mr. Kamm, Dr. Pei?

Mr. KAMM. I would say, until very recently, I do not have that sense. But I do think very recently—in fact, in the last few weeks and months—the Chinese Government might be attempting to disabuse us of the notion that by raising cases, the fate of those people is improved.

In my written testimony, you will see that I have done an analysis of a prisoner list that former Assistant Secretary of State Lorne Craner handed over five years ago exactly. If you look at what happened to the people on that list who were in prison at the time the list was handed over, you will find that they enjoyed a

rate of early release from prison three times greater than other political prisoners who were not on the list.

I could give you many other examples where people who are on lists, who are repeatedly raised with the Chinese Government, are better treated, and get early release.

In addition to what I pointed out in my testimony, that this has had the cumulative effect of making people less fearful, I would point out that some of the people who, through advocacy, have been released, such as Rebiya Kadeer, have become extremely effective spokespeople for their causes in China.

But I am concerned that recently it has come to my attention that some prisoners who are the focus of international attention may, in fact, not be getting better treatment.

Representative LEACH. Dr. Pei.

Mr. PEI. I want to add two points. First, I think we really do not know. If there were not that kind of international attention, their plight might have been even worse.

The second point I want to make is that in the last two years the United States has lost a great deal of leverage vis-a-vis China about human rights issues. The United States, in fact, needs China more than before on Korea, Iran, and a bunch of other issues, on economic issues, and the symbiotic economic relationship has grown much tighter. The Europeans are also in a similarly weak position vis-a-vis China. So as a result, that kind of attention is not producing the desired outcome.

Representative LEACH. Mr. Cohen.

Mr. COHEN. In criminal cases, the hardest judgment for every Chinese family of someone who has been detained is whether or not to go public. Chinese do not like to wash their laundry in public. Normally they want to try to handle things quietly, informally in the Chinese way.

But for serious cases, at some stage, usually after a formal arrest has been announced and it is clear prosecution is going to go ahead, Chinese families then decide the time has come to go public.

Now, just as the two previous speakers have made clear, a lot depends on the timing. In 2000 and 2001, when the Congress had to decide whether or not to grant China permanent Most-favored-Nation [MFN] treatment, we had maximum leverage. I looked pretty good getting people out of jail. But now the Chinese Government does not have that kind of situation. They feel more confident. They do not want us to see that we can be successful by naming different people.

A good example is Yang Jianli, the democratic organizer from Boston who made the mistake of going back into China after having been excluded for 12 years and using a friend's passport. He should have been sentenced to not more than one year, but they used the phony ID to give him five years. He is serving out that full five years. A lot depends also on the person's behavior. How compliant is the person while detained? How stubborn? So, there are a number of factors.

But, generally speaking, we have less leverage. Of course, the origin of this Commission lies in the fact we recognize that in granting MFN permanently to China we would need new forms of leverage.

Representative LEACH. Fair enough.

I apologize, on behalf of the House side. We have votes on the House floor at the moment, so Mr. Levin and I will have to leave. But thank you all very much.

Representative LEVIN. Could I just add quickly, this has been an important hearing. I think it emphasizes, within our ranks, if I might put it that way, there is less question about the facts and more concern about what we do about them.

Senator Brownback has said he thought the suggestions or the recommendations were not strong enough. We did some work preliminarily to try to work on that very issue, all of us. So, I do think it would be helpful as we proceed, and we must, that all of us work on the issue of how we approach the dynamics.

I think that, while China is a huge country and it is not always clear what the facts are, the basic dynamics are pretty clear, the information revolution, the economic growth, but disparities. There are deep divisions within China now economically, so there is more turbulence. The question becomes, how do we most effectively affect that? The more help we can get, the better. Suggestions of research, development of new technologies to counter repression are good. But should we be spending more funds, for example, working with groups in Hong Kong or elsewhere who can affect China if we do not do it directly?

All these suggestions, that is really what I think we need, practically, is to focus on how do we proceed from here, because, clearly, the whole purpose of this Commission was, as we engage China, as we must, we also have to confront, if I might use that word, China in terms of its development of political/religious freedoms. Thank you.

Chairman HAGEL. Gentlemen, thank you each for your active participation and contributions.

Secretary Lavin.

Mr. LAVIN. Thank you, Mr. Chairman.

Let me begin by complimenting all of the participants who provided testimony today. I found it a very useful overview of the issues we are looking at.

I would like to begin by posing a question to Professor Cohen on the commercial dimension. It is an issue that we frequently grapple with at the Commerce Department. To what extent are the commercial elements of human rights part of the broader civil rights challenge? Do you subscribe to the view that improvement in commercial rights, property rights, and so forth can lead to broader improvement? Could you comment on that?

Mr. COHEN. The growing recognition in China of rights consciousness, of the awareness that is growing, reaches property law. But you will notice the effort to enact a property law recently failed. I think it will succeed, but there is a big ideological debate going back to the remnants of the impact of earlier decades of Communist philosophy, as well as there are questions of people protecting their own economic interests, in some respects.

But there is no doubt that property law, putting respect for property rights in the Constitution, having people trying to enforce commercial rights, not only foreigners but people in China themselves, this is important. We just had a new bankruptcy law after a long

period of gestation. There will be an antitrust law soon. But the real problem is enforcement. You can enact all the laws you want and raise all of people's consciousness, but if you have not got credible legal institutions to enforce those rights, you only enhance people's sense of disappointment, frustration, and cynicism.

So here is the common factor between commercial interests and those who are interested in political freedom being protected, et cetera. You have to have a credible court system, and you have to have a credible arbitration system.

For 20 years, I represented foreign investors in China. We did not have anything to do with the courts because nobody wanted to have anything to do with them. They were not credible. So we used arbitration. But experience has shown that most—not all—of China's arbitration suffers from the same problems that the courts suffer from: incompetence, corruption, networks of relationships, influence, local protectionism.

China has a crisis of legal institutions and those affect commercial aspects of life, as well as political freedom aspects of life. That is why I think it is critical to focus on ways of improving the functioning of the courts in China. Efforts to do that, whether for commercial reasons or others, I think, have a common benefit in all these respects.

Mr. LAVIN. Part of the discussion of human rights in China involves——

Mr. KAMM. Well, in the particular work I do, I have not found much support from the business community over the years, not to say outright opposition, but certainly almost no support at all.

Mr. COHEN. You used to be a leader in the business community.

Mr. KAMM. Well, that is right, but those days are long gone, I am afraid. Recently I have seen that in the American Chambers of Commerce in China, they have started corporate social responsibility committees. I was invited to speak to a small group of committee members recently in Shanghai. They are, in fact, more and more interested in the human rights situation, and I think that is something we can work on.

Mr. LAVIN. But I was thinking more indirectly, Mr. Kamm, if I may, just in the sense of—I am not sure how realistic it is for the companies to formally promulgate human rights points of view, but is the existence of multinational corporations [MNCs] in China, the way they treat people, the way they train people, the way they conduct business, does that process lend itself toward a general improvement in human rights in China or is it not relevant?

Mr. KAMM. I look at the human rights environment in terms of two spheres. One is the overall picture, the overall environment which you document so well in the Commission's report. There, I do not see much impact in the overall general environment by multinational corporations.

However, in the workplace, no question about it, workers who are in American-owned factories and American offices certainly are exposed to values of openness and transparency, good governance. This is a very good thing.

I am particularly interested to see how Sarbanes-Oxley is going to be used in China in Chinese companies. I think it is going to pose a tremendous challenge as time goes on. But the very fact

that when you go into a Chinese bookstore now, you will find the Sarbanes-Oxley legislation translated into Chinese and available for people to read. That is a good thing. So, that is how I would address that question.

Mr. LAVIN. Thank you, sir. Thank you, Mr. Chairman.

Chairman HAGEL. Secretary Lavin, thank you.

Since we have a vote called, I am going to recognize Senator Martinez, with your permission, so he can ask his questions and then go vote, then we will come back to you, Mr. Secretary. Thank you.

Senator Martinez.

Senator MARTINEZ. Thank you, Mr. Chairman, very much. I want to thank all of the witnesses, and also praise this important report. I know it will make a great contribution to our future analysis.

I tend to associate myself with the remarks of Senator Brownback in terms of "where do we go from here?" being the real important question. There are a number of things I would love to delve into, but I will try to organize my thoughts and zero in on a couple that are particularly of interest to me.

I am concerned about this condition of prisoners. I know, Mr. Kamm, your foundation works in this arena, so I wonder if you can tell us whether there are any signs of progress or improvement beyond whatever the report may show, but just to highlight here today for me, not having read the whole report, as to what those conditions may be and what the prospects are.

Are there international visitors permitted, such as the International Red Cross, particularly with the prisoners of conscience, those that are really in prison only for their beliefs?

Mr. KAMM. A really ground-breaking visit took place in China, Senator Martinez, at the end of last year. The U.N. Rapporteur on Torture was allowed into the country and he produced quite a good report. The report basically says that torture in China remains widespread, but it appears to be declining in urban areas. He goes directly to your question about whether conditions are improving. I would summarize the report to say that, as far as the detention centers are concerned, and that is where people are held in detention for long periods before being brought to trial, we do not see improvement. In fact, it is probably getting worse.

As far as the prison system is concerned, since 1994, since there has been a prison law, I have seen some improvements. There are certainly many problems. By the way, the 1994 prison law, I do think, was in some respects occasioned by the whole debate about MFN in this country.

Now, with respect to the international community, the Red Cross is still not allowed into China's prisons. There have been discussions held on that issue for more than 12 years and they have so far not resulted in an agreement. That is how I would summarize.

Senator MARTINEZ. It is encouraging that one group has been allowed in.

Mr. KAMM. Well, the Working Group on Arbitrary Detention has been in twice, and the Rapporteur on Torture has been in once. That is what we have so far. And the Rapporteur on Torture was able to interview political prisoners, and some of those interviews

made it into the final report. So, that is a step in the right direction, but it really has been just one visit like that.

Mr. COHEN. But he made clear that he interviewed under constraints and his report was so strong and so critical, I think it is going to be a long time before they let him back in again.

Mr. KAMM. Probably right.

Senator MARTINEZ. The issue of organ harvesting among executed prisoners. I wonder if either you, Professor Cohen, or Mr. Kamm can comment on where we are on that and how prevalent is the practice? Are there any human rights standards that are being followed or observed as it relates to that?

Mr. COHEN. This is, of course, one of the most controversial questions. The Falun Gong has made the most serious accusations against the government. Thus far, we have not found that substantiated. The lack of transparency in China makes it very difficult to know what is going on. They have passed regulations that, on the face of the regulations, forbid illegal harvesting. But my impression is that it is going on. I do not know whether you could say there is an economic incentive to go on executing so many people, in part, because obviously clear benefits are coming to certain agencies and people from organ harvesting. Of course, benefits also incur to the people who are the recipients of the organs, which are in scarce supply outside of China. But this is a very difficult problem. The Chinese Government has not allowed sufficient transparency. We do not know how to answer accurately some of the very controversial charges that are being made.

Mr. KAMM. I would simply add here and repeat something that Professor Cohen said in his opening remarks. We do not know how many people are executed every year in China. It is a very closely held state secret. I tried, on my most recent trip, to get some idea of the number. There have been reports. One member of the National People's Congress said, I think two and a half years ago, that the number is about 10,000 per year.

More recently, an individual said that he had been given the number—this is a Chinese scholar—by the president of the Supreme Court and the number is appalling. We simply do not know.

I recently found the first-ever county-level report with statistics on the number of individuals executed in that county between 1950 and 1999. If you extrapolate from that number—and I am told it is not a representative county—the number would be closer to 20,000 executions.

Senator MARTINEZ. Per year?

Mr. KAMM. Yes. If you extrapolate from that number. Now, I think it is not a representative county. It is in a border region and there is a lot of drug smuggling going on. The execution rate in that county is probably higher there than elsewhere. But I am convinced that the number for the country as a whole is well in excess of 10,000.

Finally, I want to say that we are facing a particularly serious situation over the next few months. This is the execution season in China. People are typically executed toward the end of the year in China. Right now, the Supreme Court has had the power of review returned to it, but it is not exercising that power of review. In my opinion, if and when they do exercise that power of review, many

people will not be executed. So it is extremely urgent that the Commission and members of the Commission press hard that this important reform be instituted quickly, otherwise I fear hundreds of people will lose their lives; innocent people who have been convicted without due process rights will be executed. This is a very urgent situation.

Mr. COHEN. For that reason, some lawyers have suggested an Illinois-type moratorium until the Supreme People's Court's new review procedures can be set in place. It does not look like the Supreme People's Court is likely to accept that. I mentioned this issue in my written statement.

Senator MARTINEZ. I have to go vote. But let me just say, there are a number of other questions I would like to touch on, but am limited by having to run to the floor to vote. I think it is really important that we talk about these issues.

I would love to know more about the development of civil society and the opportunities that there are for that. I think it is also terribly important that information and the free flow of information be maintained and continued. Internet access, I think, is a vital way in which, in our current times, people can, frankly, find forums of discussion and support, so I think it is vitally important to continue that work.

I also would love to discuss this further with you, Mr. Xiao, in terms of how it might be utilized in a place very close to my own heart, which is Cuba, which has great similarity to all of the issues that we have been discussing here with respect to China today.

One big difference is that we do not trade with Cuba. I am often asked why we do not trade with Cuba when, in fact, we trade with China. That question I usually answer by saying "Well, I wonder whether that is improving the conditions of the people of China by our continued business with our conscience." I think it is a real problem.

So I think as we continue to flourish in our bilateral relationships in trade and commerce, and as we go to the store and find the "Made in China" label on just about every other thing that we purchase, we should not wonder what the obligation is of those of us who engage in commerce with China to end these heinous practices, or at least raise our conscience to a level to cause us to wonder if it is all right and everything is fine, and China is the prosperous country that we all know it is. The Olympics are going there, but yet something is very "rotten in Denmark," to quote from William Shakespeare. Thank you very much.

Mr. LAVIN [presiding]. Thank you, Senator.

With your permission, Representative Honda, we will ask Deputy Secretary Law to proceed with his questions.

Mr. LAW. Thank you, Mr. Chairman. I am pleased to see that we have rules for the peaceful transition of authority on this Commission.

I first want to commend all of the panelists for truly cogent and penetrating testimonies. It has been a wonderful learning experience. I also want to thank each of you for your commitment, your personal commitment of time, treasure, and talent to this tremendous cause.

I was particularly taken by a theme that was part of Dr. Pei's testimony, and my question will be directed at him. The reason I

was taken by it is because it dovetails perfectly with the opening statement that I was going to give at the outset, which I would like to submit for the record. I would like to briefly summarize a few of the points I would make, which would then lead to the question.

One of the questions we often ask ourselves is whether the glass is half full or half empty. Someone once wisely responded to that by saying that it depends entirely on how thirsty you are. When we try to assess progress on human rights in China, there are often two views. To some in the West who are eager to do business in China, the glass appears half full.

But to those in China who are thirsting for freedom of speech, religion, and assembly, who are thirsting for the protection of an impartial rule of law, the glass remains half empty and appears at times, especially more recently, to be slowly evaporating.

I want to extend my thanks to the Commission staff for assembling a report that gives due credence to both perspectives, noting the progress that China is making undeniably on certain human rights issues, as well as highlighting the disconcerting slippage that has occurred in recent months with respect to basic political freedoms.

What is important to discern in all this is not individual anecdotes, but meaningful trends. One of the most significant trends, in my view is the growing intersection and overlap of fundamental human rights issues and larger economic interests. We see this vividly in the area where the Department of Labor is most directly engaged, and that is in labor rights.

Increasingly, China's ability to institute basic wage protections, health and safety standards, and pension rights will be a key determinant in achieving both economic and civic stability. The Chinese Government knows this and has been fairly forward-leaning in seeking technical assistance from our department and in pursuing labor law reforms that can help quell mounting unrest over labor conditions in China. My written statement does list and enumerate some of the results of the progress we have made in that area.

Another example of this trend is the growing nexus of freedom of speech, regulation of the Internet, transparency of economic information, which some of you have discussed, as well as respect for intellectual property.

As freedom begets freedom, repression also begets repression. China's curbs on political dissent have slowly but surely metastasized to constrict the free flow of information on the Internet, access to the Internet, and unfettered economic reporting. Such restrictions not only impinge upon individual liberties, they also impede the effective functioning of China's own economy by discouraging the creativity, collaboration, and transparency that are the lifeblood of sustained economic growth.

We raise these concerns and issues in this Report not to scold China or to claim moral superiority, and nor to disparage China's commitment to achieving continued progress on all these fronts. But as these issues of human rights and economic growth converge, China will increasingly discover that freedom is not divisible and the rule of law, not repression, is the best guarantor of prosperity and stability. Finally, those who currently see the glass as half full

will begin to share the same perspective with those who see it today as half empty.

Now my question for Dr. Pei, and anyone else who would like to respond. In your recent book, "China's Trapped Transition: The Limits of Developmental Autocracy," you point out the strains between China's dualistic policy of pro-market economic growth on the one hand, and continued autocratic one-party rule on the other.

In your view, is the Communist Party's dualistic strategy sustainable in the long term? How can we as policymakers best challenge that policy to promote greater, broader human rights and freedom in China?

Mr. PEI. I believe this strategy is not sustainable for the long term, mostly because Chinese society itself is growing far more complex, plural, and it will require increasing investments in law enforcement and political control that simply are going to be unaffordable.

The second part is that what has underwritten this strategy is continued economic growth. We cannot take for granted that China's economic growth will continue for the next two to three decades. That is because the current growth model itself is not only inefficient, but is producing imbalances that contribute to rising social and political strengths.

Certainly, I think what is most important to know about China is the lack of values that will give both the people in China confidence, and also the members of the ruling elite the confidence that this system will work. From my own research, it is abundantly clear that there is not only a crisis of confidence on the part of ordinary citizens, but there is also a crisis of confidence on the part of the ruling elite.

Mr. LAW. Interesting.

Yes?

Mr. XIAO. If I could just add a little bit to what Dr. Pei just said regarding your question of whether the current ruling model is sustainable. I agree that in the long term it is not sustainable, and would add two factors.

One is simple, but is important: the environment. China's economic growth has enormous environmental cost, environmental degradation, and that factor will get back to China's economy, and also its sociopolitical stability.

The second, we have discussed a little bit less here, is the Chinese Communist Party, by nature, is the controlling force of the nation. Yes, it is ruled by law, but most importantly it is the rule by the gun and the rule by the pen. That is Mao Zedong's quote and it still works today.

It is ruled by the violence, intimidation, and backing by a propaganda, ideological machine that the Party governs. That machine is really in crisis because of the Internet and other commercialization of official media. That is where the Chinese people cannot be fooled any more and that is where the Party is fighting a losing battle.

Mr. LAW. Thank you both. That is a very important point. That is the only question I wanted to raise. It does go, though, to a point that Mr. Kamm made earlier about the fact that, in recent years in particular, the business community has not been actively en-

gaged on these issues, but slowly but surely as that business model becomes unsustainable, the business community will have to start to look more intentionally and be more engaged on these issues. Thanks.

Mr. COHEN. Could I just supplement this with a reference to a question Secretary Lavin asked earlier that I did not chime in on about the impact of American cooperation with China in the business sphere?

Although our hopes that this would produce more rapid political and legal reform have not yet been vindicated, I think the broader impact continues. The opportunities that foreign business provides through massive investment in China and technology transfer are a very important influence. The joint venture, the foreign-invested enterprise, is a mini university in a country that has not yet allocated sufficient resources to higher education.

On the other hand, the business community in the United States and elsewhere seems blissfully unaware of the full weakness of Chinese legal institutions. I think it should be applying far more cooperation and pressure for improvement. Hundreds of thousands of contracts, literally, are made every year, most of which provide for arbitration of disputes in China. People who sign these documents often are crossing their fingers and closing their eyes, or are simply unaware of the risks involved. It is only when they do get involved that they see the weakness and the inadequacy. I think foreign business should be working harder with the Chinese to strengthen these institutions.

[The prepared statement of Mr. Law appears in the Appendix.]

Mr. LAVIN. Thank you, Professor.

Let me ask Representative Honda for his comments.

Representative HONDA. Thank you, Mr. Chairman. Let me, first, apologize for being tardy. I know that the expertise here is very global and it is very deep and profound, and I know that the witnesses have spent a lot of personal time getting here, so I just wanted to let you know that I apologize for being late.

Having read the report that our Commission has put out, I am struck by its even-handedness and its objectivity. That is why I wanted to hear your testimony. Having heard some of the comments, some of the suggestions that Mr. Cohen had made, I guess my general question to all of you would be, given the kinds of directions that Congress has taken up today with respect to China, and Asia in general, and given our report, what are some of the other suggestions you would make for legislators to develop policies toward China in the different arenas, everything from the rule of law to business and the protection of intellectual property?

You made one statement, that we should be engaging ourselves more, it sounds like, at the ground level in terms of us understanding what and how China does business in terms of contracts, contract proposals, and that sort of thing.

Second, looking at a possibility which is highly improbable, by the sense that I got, to looking at the courts in China to suspend all death penalties until such time that they are all reviewed, which will have a better outcome, historically.

Are there other kinds of comments and suggestions you could make to Members of Congress and the Senate as to what direction

and what kinds of postures we should be taking in order to improve, and also to learn more?

Mr. COHEN. There is one over-arching factor no one has mentioned, but we are all aware of. Robert Burns once said, "Oh, would the Lord, this gift He give us, to see ourselves as others see us." We are worried about human rights and law reform in China. The United States has generally stood for good things in the Chinese mind. But current events, especially the struggle that the Congress and the Executive Branch are in with respect to our government's treatment of people inside and outside this country—whether we will adhere to due process, the rule of law, the rights of suspects, the role of the court in independently reviewing arbitrary acts by the Executive Branch—people in China are very much aware of this if they have access to the Internet, the Voice of America, or Radio Free Asia.

We cannot be hypocritical. We cannot say, "Do as we say, not as we do." What Americans stand for in this world has been eroded, as many people realize. The most important thing Congress can do is really strengthen, once again, our soft power. Make the right decisions about the rule of law in this country.

Representative HONDA. Thank you. That sort of reminds me of the Scripture that says, "How is it that you are worried about the splinter in my eye when you have a log in yours."

Any other comments? Yes?

Mr. XIAO. I, first, want to absolutely support what Professor Cohen said. The U.S. Government's human rights record and actions themselves speak much louder than words, and that will only strengthen or weaken the power of the negotiations and dialogue with China's government.

So the one thing the U.S. Congress must do is hold the highest standard of its domestic and foreign policy practices on the human rights standard.

Second, regarding what I also suggest, I want to bring the Commission's attention to another important document, "Race to the Bottom: Corporate Complicity in Chinese Internet Censorship," published by Human Rights Watch last month, which addressed issues of U.S. companies—actually, global Internet companies, but mainly U.S. companies—Google, Yahoo, Microsoft, and their role in reinforcing the censorship mechanism within China. The previous question was, "These U.S. companies, are they problems or solutions for human rights?" For those Internet information companies, they are both. They are a solution in terms of their being part of the information revolution in China. They provide technology applications and commercial incentive. But they are also part of the problem because, in order to get access to the Chinese market, they have to cooperate to some degree and be complicit with the Chinese censors.

This has serious implications not only to the Chinese netizens, but to the world's information freedom and privacy. Earlier this year I was here at a different hearing, proposing the Code of Conduct approach for industry. I have been involved with multiple universities to draft the guiding principles for those industries and had the dialogues and working group with the companies, trying to push that collective action approach.

However, if you read the Human Rights Watch report, it is important to stress the role of Congress, that legislation seems a necessary tool in order to move these things forward, because companies have incentives, but also disincentives to stand up against the Chinese Government. They need the protection and support from the U.S. Government. That is where I think the Congress can do something.

Let me say very specifically what is going to help. We talk about the rule of law here. We talk about freedom of information. In China, the main control of information is not by rule of law, it is by self-censorship, by intimidation, I stress. So those companies, they censor something on the Internet not because the Chinese legal agencies gave them a list specifically explaining what needed to be censored. It is because they hired staff. They come up with a list of politically sensitive materials themselves under the guidance of the Chinese authorities. They over-censor as well, and they do not have a legally accountable document for this process. That is where the transparency and the rule of law works.

The Yahoo buyer often says, "Oh, we just follow Chinese law." Actually, a lot of their censorship is not following any real documented Chinese law. If you force them to make that transparent, it will protect these companies' operating environment, but it would also significantly actually change the censorship mechanism within China, which to me will be of great benefit to the Chinese netizens.

Representative HONDA. I appreciate your comment, Mr. Xiao. If what you are saying is that if the U.S. companies did not follow or interpret strictly what they thought might be law and they moved forward as you suggest, what is the impact on the end users if they exercise that level of flexibility from the central government in increasing prisoners of conscience?

Mr. XIAO. The impact will be big. I cannot completely predict, because the censorship mechanisms are huge. It is not only about censorship of certain words or search results.

But let us focus on the future words list. I am teaching in the school. In the U.S. mainstream media, there are certain words, seven or so, that you cannot really use. In the Chinese Internet, the list is as long as more than 1,000 Chinese words that cannot be used that are sensitive materials.

But where does that list come from? That list is not necessarily directly transparently coming from any legal enforcement agencies in China. Do they ever make it public? No. Even when they order media or Internet companies to censor those words and contents, do they give a written record? Most times, no. So they themselves are afraid. Also, that is the mechanism of censorship, how that works. They want to also leave deniability for themselves.

If we can push, just simply by the rule of law, corporate transparency, and social responsibility approach to force that as a transparent and legal process, I do not know if they can dare to show all the things they censor. That is like reading the psychological mind of what they are really afraid of.

Representative HONDA. So, if I may, what you are really saying is, through the pipeline, it should be agnostic and allow the end

users to determine for themselves the shade and the content of their words and their terminology.

Mr. XIAO. Right. The end users have much more creative ways to express themselves. But from the censor's point of view, it will cause incredible changes for them in how to control people's minds, which again, you are empowering the users and protecting the users, which, in the long term, is significant.

Mr. KAMM. Congressman Honda, just two quick recommendations addressing your question.

First of all, I have been coming here for many years, meeting with members, testifying. My impression is that in the past, members of the House, Senators, whenever they went to China they would raise cases, they would hand over lists, or when Chinese officials came here that would happen. My impression is that that is much less common now. Just reading from press reports of recent visits by important congressional delegations, I see a lot of interest in intellectual property rights and the situation in Korea, all of which is as it should be.

But I would strongly recommend that Members of Congress return to the previous practice of raising cases and handing over lists. You have got an excellent database. You can generate lists very quickly and very professionally, and of course we can help in that respect, too.

A second recommendation. My foundation has put together a list of more than 120 cities and States that have sister city and State relationships in China. That is a very good channel to raise human rights concerns with those places in China. When those cities host or send delegations to China, again, they should raise cases and concerns in those specific cities and provinces. In a couple of weeks I will meet with a city that has a relationship with a city in China, and they are willing, in fact, to do just that. So this is a specific recommendation that I hope the Commission might follow up on.

Mr. COHEN. Could I just supplement that? Before you got here today, Congressman Honda, I discussed, among other things, the most pathetic case I know of, that of a blind, so called "barefoot lawyer," a legal activist who has been badly abused for over a year in China in Linyi City, a city, if you can believe it, of 10 million people. I had never heard of it before I met this man.

Linyi City authorities have not only committed horrible abuses against him, but the reason he got involved was because of their illegal compulsory sterilization and abortion program, violating China's central laws for birth control, et cetera. Thousands of people were abused. He was protesting this.

Now, a Linyi City delegation is coming here to D.C. next month to take part in a beautiful program at the National Arboretum. Are we going to let these people come here and manifest no recognition of the abuses they are committing? I hope not.

Representative HONDA. Thank you.

Chairman HAGEL [presiding]. Representative Honda, thank you. Any further questions?

[No response.]

Chairman HAGEL. Gentlemen of the panel, we are most grateful for your helpful and insightful thoughts and analysis. You all have

been very helpful to this Commission, and in particular, to our staff, over many years. We are grateful for that.

As I noted earlier, your testimony and other comments, as well as the dialogue we have just had over the last hour and a half, will all be included in the record. We may have follow-up questions. I know we will continue our association with each of you, and we are grateful for that also.

I also want to thank our staff for the good work they have done in producing a rather significant report, as well as all of my colleagues, for their personal involvement. Thank you very much.

This hearing is adjourned.

[Whereupon, at 11:15 a.m. the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENTS

PREPARED STATEMENT OF JEROME A. COHEN

SEPTEMBER 20, 2006

Senator Hagel and Other Distinguished Members of this Commission, All of us who focus on China's progress, problems and prospects with respect to human rights and the rule of law are grateful for this Commission's continuing interest and cooperation. Hearings such as today's and publications such as your just-released 2006 Annual Report, which offers a comprehensive, balanced and accurate account of recent developments, stimulate interest and spread knowledge about a vast, complex and important subject that receives too little public attention in both China and the United States. It would be wonderful if the 2006 Annual Report could be published in China as well as this country.

Striking the right tone for today's Hearing is a challenge. It has been over a year since my last appearance here, and this has not been a good time in China for either the rule of law or for human rights in the sense of political and religious freedoms, protection against arbitrary criminal punishment, the development of fair and independent courts and the growth of a free and vigorous legal profession.

The picture is somewhat brighter if we focus on the role of law and legal institutions in promoting China's remarkable economic progress. The new and long-awaited Bankruptcy Law and the forthcoming Antitrust Law are recent examples of ongoing legislative progress, although the temporary failure of the draft Property Law reminds us of the ideological as well as practical and technical challenges confronting the National People's Congress in seeking to regulate bitter rural and urban land use disputes.

Yet even commercial laws need credible enforcement. China's rapidly expanding institutions for legal education and scholarly publication are gradually improving the craft skills of the various branches of the legal profession. But the courts, the China International Economic and Trade Arbitration Commission and most, but not all, of the many municipal arbitration organizations continue to suffer from political interference, corruption, "local protectionism" and the corroding effects of personal ties compendiously described as "guanxi." The impact of these serious institutional shortcomings will become more apparent as China's economy reaches a higher stage of development. Moreover, not all recent economic rulemaking has been positive in facilitating either foreign business cooperation with China or even unfettered distribution of purely commercial news.

I am sure that my colleagues at this Hearing will analyze the continuing and extensive denials in practice of the freedoms to receive information, speak, publish, organize, assemble, demonstrate and worship that are enshrined, in principle, in China's Constitution. Here I will comment only on prospects for further legislative reform of the administration of criminal justice and relevant activities of Chinese courts and lawyers.

PROSPECTS FOR LEGISLATIVE REFORM OF THE CRIMINAL PROCESS

Chinese experts have long recognized that the 1996 Criminal Procedure Law (CPL) is in need of revision, clarification and elaboration. Several impressive academic drafts of a new law have been circulating in official circles for some time. Yet hopes that a new law might be enacted by the time of the Beijing Olympics in 2008 now appear to be receding. This new law was to accompany and implement China's long-awaited ratification of the International Covenant on Civil and Political Rights (ICCPR), which the People's Republic of China (PRC) signed in 1998. Ratification of the ICCPR—and implementation in accordance with its terms—would have a more profound effect on the PRC's political, legal and social systems than the PRC's entry into the World Trade Organization has had upon its economy. Undoubtedly for this reason, in what is plainly a very conservative climate for law reform, ICCPR ratification also seems to be retreating to the back burner of a leadership that has shown itself to be increasingly impervious to popular demands for due process in law enforcement. At least in the short term, the Politburo has decided to meet the spectre of social instability with harsh repression rather than legislative innovation.

This is unfortunate since a large number of Chinese criminal justice experts from the judiciary, the procuracy, the defense bar, the Ministry of Justice, the Ministry of Public Security, the NPC staff and academic life have been making impressive efforts to develop a national consensus on a broad range of understandably contentious issues. Should suspects generally be granted bail during the investigation pe-

ried instead of languishing in detention as at present? Should they have a right to keep silent and not incriminate themselves? Should a presumption of innocence be confirmed and its implications spelled out? Should defense lawyers be allowed to monitor police interrogations, conduct their own investigation prior to indictment and freely meet detained clients? What steps should be adopted to make defense lawyers available to accused who more often than not go unrepresented? What protections should be enacted to reduce the likelihood that suspects will be tortured and to curb widespread overtime detentions? What measures should be prescribed to strengthen the current insignificant legislative barriers to arbitrary search and seizure? Should all illegally-obtained evidence be excluded from trials? Should plea bargaining be fostered? Should prosecution witnesses be required to appear at trial in order to make meaningful the existing right to cross-examine one's accusers? What kind of appellate review should replace the current perfunctory procedure? None of these issues, which have long cried out for legislative resolution, is likely to be dealt with by the NPC in the near future.

Nor does the NPC seem ready to abolish the notorious, supposedly "non-criminal," administrative punishment of "reeducation through labor" (RETL), which allows the police unilaterally to ship people off to three or even four years of confinement in circumstances that are similar to those of the conventional criminal punishment of "reform through labor." Two or three years ago, many Chinese reformers, even within the Ministry of Public Security (MPS), seemed confident that the NPC was about to abolish or at least substantially revise RETL. There was widespread agreement among the experts that its continuing existence undermines the significance of the Criminal Procedure Law (CPL), since it allows the police to circumvent the protections of the CPL, including review by the procuracy and the courts, and nevertheless to send people to long periods of what is, for all intents and purposes, criminal punishment. But the apparent opposition of the Central Party Political-Legal Committee and the leadership of the MPS, which believes that it continues to need this weapon to help quell social unrest, has been sufficient to block adoption of the draft legislation that now lies dormant in the NPC.

SUPREME COURT EFFORTS TO RESTRICT APPLICATION OF THE DEATH PENALTY

Although one cannot be optimistic about immediate prospects for further NPC reforms of the criminal process, this does not rule out the efforts that can be made by other institutions, especially the Supreme People's Court (SPC). Within its limited political power, the SPC has been trying to sustain the momentum for law reform. Early this year, it made public its Second Five-Year Reform Program for the People's Courts, which sets forth an ambitious 50-goal agenda for court improvements of various kinds. It has more recently announced thirteen new research projects for implementation. Experience suggests caution before equating breathless pronouncements with actual accomplishments. Nevertheless, the most active law reform currently under way in the criminal justice field is the SPC's energetic effort to dramatically improve the present inadequate procedures for trying and reviewing death penalty cases.

The SPC recently announced its determination to retrieve from the provincial high courts the responsibility the SPC had granted them for final review of all death penalty cases except for those involving crimes of corruption and of endangering state security, which the SPC has always retained. For practical rather than political reasons, implementation of this determination has proved to be a slow and painstaking task, largely because of the difficulty of recruiting the 300 to 400 new SPC judges who are deemed to be necessary to do the job. This estimate offers some clue to the huge, but unconfirmed, number of capital prosecutions brought by the procuracy each year. The SPC has reportedly recruited over 100 of the newly needed contingent from the lower courts. In order to speed completion of the task, it has also begun to recruit Chinese law professors and lawyers to serve on its staff. Although this had occasionally been done in the past, the current attempt to recruit broadly outside the career judiciary bodes well for the future, if it proves successful.

Because the SPC is not expected to grant final review to the retrieved categories of capital cases until 2007, that responsibility will continue to rest with the high courts until then. Although some lawyers have urged the SPC to declare a moratorium on final reviews until it is ready to conduct them, the SPC has not responded to this proposal and is unlikely to do so. Even the SPC, which to its credit frequently adopts a dynamic view of its authority, would be hard-pressed to take such a bold step in the absence of new legislation or a Politburo instruction, neither of which is anticipated. This is especially the case since the enactment, just weeks ago, of a Supervision Law that strengthens the controls of the standing committees of the people's congresses at all levels over government, court and procuracy activities.

When this law goes into effect on January 1, 2007, the SPC will be required to file with the NPC's Standing Committee each new interpretation it issues, knowing that the Standing Committee has the power to amend its interpretation.

What the SPC has done is to move ahead to improve procedures at the high court level. Since July 1, all appeals of death penalty cases require a formal court hearing—though not necessarily a public hearing—rather than merely what was often only a cursory review of the case file and the briefs submitted by the procuracy and defense lawyers.

Moreover, some SPC experts have recognized that not only are the appellate and final review processes in need of improvement, but also the trial itself. Capital trials inevitably suffer from the same deficiencies as other criminal trials in China, only the stakes are higher. In the absence of specific authorizing legislation, it is unclear how far the SPC can go in mandating more accurate and fairer procedures in capital trials. Yet if it does carry out far-reaching improvements, this would not be the first time it has tread upon the NPC's turf. Thus far, in order to guide trial courts, the SPC has reportedly drafted "standards for the application of the death penalty in certain cases," namely, for crimes of murder, injury causing death, drug trafficking and robbery, which account for the bulk of PRC death sentences. These standards, which have not been made public, apparently call for the imposition of capital punishment only in cases in which the new and detailed conditions that they set forth have been met. Of course, law reformers will be quick to advocate that any new trial and appellate procedural guaranties in capital cases be extended to the processing of other serious crimes.

DISGRACEFUL HANDLING OF SOME RECENT CRIMINAL CASES

Unfortunately, the SPC's encouraging activism with respect to death penalty reform has not been matched by equal vigilance in supervising the conduct of lower courts in individual criminal cases. This past year has witnessed a series of outrageous criminal convictions in cases that have been widely publicized outside China despite being shrouded in secrecy within the country. I have served as an informal consultant in two of these cases. In one, the blind legal activist Chen Guangcheng was sentenced to four years and three months in prison by the Yinan County Basic Court in Linyi City, Shandong Province, allegedly for instigating a mob to block a road and for inflicting damage on public property. The detention procedures and trial in this case were a travesty of justice by any standards. In the other case, Zhao Yan, a Chinese staff member of the Beijing bureau of the New York Times, was sentenced to three years in prison allegedly for committing criminal fraud against a friend, again after detention and trial procedures that shamed a great nation, but this time not in a poor, rural Shandong county but in Beijing, the prosperous and impressive political and educational heart of the country.

These cases are merely the tip of a criminal process iceberg that is largely concealed from the scrutiny of both Chinese and foreigners and that functions with cynical disdain for the country's criminal justice laws and international human rights standards. Court procedures are sometimes a farce, but pre-trial police misconduct is frequently worse. The Ministry of Public Security in practice often condones the misbehavior of its police, who increasingly retain thugs to carry out some of their most lawless acts. And the Ministry of State Security, China's version of the former Soviet KGB, is even more a law unto itself because of the even greater secrecy of its operations.

At the national level, the Supreme People's Procuracy, the supposed "watchdog of legality" in Communist systems, continues to issue rules designed to curb actions such as illegal extended detentions of suspects by investigating officials. Yet in practice, local procuracies are often politically helpless or uninterested in implementing such rules. Further, in pursuing their own responsibilities for the investigation of corruption cases, local procuracies themselves frequently disregard prescribed procedures. Thus far, efforts by the NPC and local people's congresses to ferret out law enforcement abuses have not proved effective and in some cases, have actually served as cover for illicit interference with law enforcement. Whether the recently promulgated Supervision Law, which strengthens the powers of the standing committees of people's congresses to review the operation of various government agencies including the courts, will yield better results remains to be seen.

THE COMMUNIST PARTY'S PARTICIPATION IN CRIMINAL INVESTIGATION

One of the most prominent and interesting features of recent PRC criminal justice is the increasing visibility of the Party's own investigative and coercive apparatus. To be sure, the Party, through its political-legal committees and through organizations within every law enforcement agency and court, controls the operations of offi-

cial law enforcement at every level of government. But it also plays a major role itself in investigating and confining suspect Party members in important and complex cases before their processing by the official law enforcement agencies even begins. The Party's 70 million members, and sometimes others as well, are subject to informal, but effective and often long-term compulsory detention by one of the Party's ubiquitous discipline and inspection commissions. This process is generally referred to as "shuanggui," which means "double regulation" or "the two stipulations," because investigative targets are ordered to report at a stipulated time and place.

Especially in major cases of corruption, shuanggui investigation/detention often precedes both the formal imposition of Party disciplinary sanctions against members who appear to have violated Party rules and the transfer of suspects to the law enforcement agencies if they appear to have violated the Criminal Law. Because shuanggui suspects are often relatively important Party figures, they are usually confined in more comfortable quarters than a regular police detention cell. Nevertheless, although recent Party documents purport to assure shuanggui detainees of humane treatment, guaranteeing them against abuses against their person and property and even authorizing contacts with their family, if their captors believe this would not adversely affect the investigation, they are generally held incommunicado and denied some of the protections to which criminal suspects are entitled at least in principle. Thus they may be detained for as long as the Party discipline and inspection commission thinks appropriate, have no right to the advice of counsel, and have no opportunity for the procuracy to review the basis for their detention. If the suspect is turned over for criminal investigation, these criminal procedure rights should come into play, but by then it is usually too late for them significantly to benefit the suspect even if they are observed in practice. Consequently, as suspects, Party members—the nation's elite—have even fewer due process rights than the masses!

NEW RESTRAINTS UPON LAWYERS

My last year's testimony to the Commission emphasized the many restrictions imposed on China's criminal defense lawyers during both the investigation and trial stages and the threat of criminal prosecution that hangs over any lawyer who presents too vigorous a challenge to the facts alleged by the procuracy. The situation is no better this year. Indeed, in several respects it has deteriorated.

During the past year police or their hired thugs have often beaten lawyers for controversial defendants in order to prevent the lawyers' access to their clients or to the courts. The courageous human rights lawyer Gao Zhisheng was deprived of his license to practice law and is now being detained for unspecified "criminal activities." His law firm has been suspended from practice for one year. Police illegally prohibit his family from leaving their home or receiving visitors.

Lawless police blockades, long a feature of PRC repression of political dissidents, seem more numerous at present than at any time I can recall and are now frequently imposed on lawyers and other legal activists as well as their clients. A large group of government officials and thugs have blockaded the farm house of blind "barefoot lawyer" Chen Guangcheng since August 11 of last year and have maintained the blockade against his wife even after Chen was illegally taken into custody in March of this year. In June, I was invited to dinner at the apartment of former Shanghai lawyer Zheng Enchong, who had lost his license because of his dogged defense of the real estate rights of Shanghai residents and who had just completed a three-year prison sentence for allegedly revealing "state secrets" about a public protest to an American-based human rights organization. However, a group of policemen, who could cite no legal authority and would give no reasons, barred my visit. When repeatedly asked to justify their interference, they merely said: "We are police."

Plainly, contacts between lawyers and the media, especially the foreign media, have become increasingly sensitive. Defense lawyers in "state secrets" cases have been warned not to inform the press, or even the defendant's family or legal consultants, of developments in the case, even though this may inhibit an effective defense. What triggered the persecution of "barefoot lawyer" Chen Guangcheng was his role in the Internet report on Linyi's illegal birth control measures posted by several Beijing legal scholars and the long dispatches filed by foreign journalists about the situation, including a front-page story in the Washington Post. Two of the scholars who filed the Internet report were subsequently threatened with being sacked by their law schools and have also suffered other sanctions. The prosecution of former lawyer Zheng Enchong demonstrated how easy it is for someone who has contacts with foreign reporters to be convicted of illegally transmitting "state secrets" or mere "intelligence" to a foreign entity. What constitutes a "state secret" or "intelligence"

remains a fluid concept in the PRC and is subject to arbitrary, even retroactive, interpretation by the authorities.

Equally sensitive to the regime are the contacts that public-interest lawyers have been cultivating with aggrieved groups of citizens. Perhaps the most recent adverse development involving lawyers was the issuance on March 20, by the Executive Council of the All China Lawyers Association, of a "Guiding Opinion on Lawyers' Handling of Mass Cases." This document, evidently the product of pressure from the Ministry of Justice, which controls the legal profession, is applicable not only to criminal cases but also to all other instances in which a lawyer is asked to represent ten or more people in the same case. It has created an uproar among activist lawyers and law professors since it substantially restricts the conduct of lawyers in such cases and vitiates the loyalty to their clients that has been developing into one of the hallmarks of the legal profession in China.

The Guiding Opinion's most sinister provisions require lawyers, after accepting a mass case, promptly to "discuss the case fully" with "the relevant judicial departments," "honestly report the situation" to them and "actively assist the judicial organs to clarify the facts." In this context the terms "judicial departments" and "judicial organs" plainly refer to the law enforcement agencies, not only to the procuracy and the courts but also to the police! Lawyers are also required to report on the situation to other government agencies concerned, including the "judicial administrative organ in charge," i.e., the local justice bureau under the Ministry of Justice.

The Guiding Opinion emphasizes that the lawyer has a duty to assist the government as well as his client in such cases and to mediate and promote solutions that are acceptable to all. The Guiding Opinion also prohibits lawyers from encouraging or participating in large group efforts peacefully to use letters and visits to petition government agencies to resolve problems. Yet it authorizes lawyers to take part in such efforts if invited to do so by relevant government agencies. The Guiding Opinion deserves detailed analysis, but it obviously seeks to convert lawyers into instruments of law enforcement and other government institutions to the prejudice of the interests of their clients in mass cases. This represents a giant step backward to the 1980s, when China's newly revived lawyers were deemed to be merely "state legal workers" rather than the independent representatives of their clients.

THE IMMEDIATE FUTURE

This is a gloomy time in China for the administration of criminal justice and related legislative and judicial reform. The NPC seems to be frozen in this area, and the only significant systemic reform—the SPC's effort to improve procedures in death penalty cases—is moving slowly and toward an uncertain outcome. In too many cases, the police operate with reckless disregard for existing criminal procedures, and in making their decisions courts are the helpless tool of Party and government leaders and the objects of other distorting influences. Although the nation's leaders continue to use the abstract rhetoric of the "rule of law," they increasingly emphasize that the Western-style laws, institutions and procedures that the Party has introduced since 1978 are not to be applied in a Western manner. They want the legal system to repress the rising tide of social unrest generated by China's rapid success rather than effectively process the new disputes and grievances that are being brought to it for solution. This in itself has added to social instability. The failure of the highly touted "socialist rule of law" to meet popular needs and its frequent use as an instrument of repression have fueled feelings of frustration that are being transformed into what has accurately been called "rightful resistance."

Are there any grounds for optimism? Although the engineer-dominated Politburo Standing Committee appears to have little appreciation of a legal system's potential contribution to social engineering and to the resolution of social tensions, below the top leadership level a younger and more sophisticated generation of officials, legislative staff, scholars, judges, prosecutors and lawyers is actively engaged in field research and practical experiments relating to reform of the justice system. Moreover, ideas of due process and fair adjudication appear to be making inroads into the Party itself, as demonstrated by the continuing quiet efforts to improve the conditions of shuanggui detainees and to "judicialize" Party disciplinary tribunals.

A year from now, after the 17th Party Congress, at which the Hu Jintao-Wen Jiabao leadership is expected to be firmly entrenched for the next five years, we will be able to form a clearer picture of the prospects for reform. Optimists already claim to see signs, or at least hear talk, of bringing officials educated in law into many higher posts within the Party and government, including the influential provincial Party discipline and inspection commissions. It would also be desirable to place law-

trained officials in charge of all the country's law enforcement agencies at every level.

The most obvious indication of the new leadership's intentions regarding the legal system will be personnel changes within the Politburo and its Standing Committee. The admission to the Politburo of Minister of Public Security Zhou Yongkang at the 16th Party Congress, making him the sole government representative of the entire legal system at the pinnacle of power, has not substantially benefited criminal justice reform. It is rumored that next year Minister Zhou will be promoted to membership in the Politburo Standing Committee, perhaps replacing Luo Gan as the head of the Central Party Political-Legal Committee that leads the operations of the courts, the procuracy, the Ministry of Justice, and the law enforcement ministries. Some even believe that he will also become head of the Central Party Discipline Inspection Committee. How he would exercise such vast power is unclear, but it would be comforting if someone with greater knowledge and experience in legal affairs, and with greater zest for strengthening the rule of law, were appointed to the Politburo. It was disappointing that, at the previous Party Congress, SPC President Xiao Yang was not elevated. A seat in the Politburo would give him some of the political clout required to implement his ambitious plans. An earlier SPC President, Ren Jianxin, who had decades of legal experience, not only sat in the Politburo but also served as head of the Central Party Political-Legal Committee. But perhaps a leadership that wants to keep "politics in command" does not regard that as a desirable precedent.

Such personnel appointments will have a crucial impact upon whether the PRC decides to ratify the ICCPR prior to the 2008 Olympics, adopt a new Criminal Procedure Law, curb police lawlessness and remove the restrictions that hamstringing defense lawyers and other legal activists.

WHAT SHOULD WE DO?

Understandably, China has always gone its own way, and outsiders who have sought to influence its course have had much to be modest about. Yet China has never been more open to international cooperation in all fields than today, and the PRC's legal experts, in and out of government, genuinely welcome virtually all opportunities to work with counterparts from abroad. International organizations, foreign governments and charitable foundations, non-governmental organizations, universities and lawyers' groups from many countries have already helped to launch numerous joint law reform projects in China. Nevertheless, this impressive effort has merely scratched the surface of the need and revealed the depth, breadth and long-term dimensions of the opportunity.

My hope is that Congress and the executive branch will substantially increase existing U.S. Government funding for cooperation with the PRC in rule of law and human rights projects. Moreover, the scope of this funding should be expanded to support research into important problems of criminal justice and the development of legal institutions in China. Continuing government sponsorship of training, conferences and exchanges is vital. Yet, unless such activities rest upon an adequate research foundation, their impact will be limited. For example, everyone recognizes that, if China is ever to enjoy a genuine rule of law, the most fundamental reform required is the development of a fair and independent court system. China's neighbors—Japan, Taiwan and South Korea—have made great strides in this respect despite the fact that they share China's Confucian-Buddhist political-legal culture. How did they do it? And why did previous efforts to establish a fair and independent judiciary fail in China? This type of research deserves the highest priority. Yet it has thus far found no U.S. Government support.

Finally, no assessment of prospects for law reform in China should overlook the work on Chinese justice published by relevant United Nations agencies, the reports of international human rights NGOs, the studies published by various governments including our own and the scholarship of the academic community. This vast literature not only enhances our knowledge of a complex and relatively non-transparent subject but also stimulates further progress by the PRC. The report on torture in China issued last spring by Professor Manfred Nowak of Austria, Special Rapporteur of the U.N. High Commissioner for Human Rights, goes far beyond a narrow focus on torture and should be required reading for China's leaders as well as all others concerned. The largely unnoticed but important decisions of the U.N. Working Group on Arbitrary Detention, which has repeatedly condemned PRC practices in a long series of sad cases, is another example of U.N. action that deserves greater circulation. The 2006 Annual Report released today by this Commission is a splendid example of how helpful a foreign government's report can be to China's progress.

I strongly urge that the U.S. Government devote greater financial support to the dissemination of all such material in China, where, largely because of well-known obstacles to communication, even judges, prosecutors, legal officials, lawyers and scholars often do not know about events, incidents and developments involving the administration of justice in their own country. It is shocking, for example, that many Chinese legal experts who would be appalled at their government's persecution of blind "barefoot" lawyer Chen Guangcheng have never heard of this case. This suggests that agencies such as Voice of America and Radio Free Asia still have a long way to go. Yet it is possible, even in today's controlled media environment in China, for Chinese language versions of such helpful material to circulate.

PREPARED STATEMENT OF JOHN KAMM

SEPTEMBER 20, 2006

RECENT DEVELOPMENTS IN DUI HUA'S DIALOGUE ON HUMAN RIGHTS WITH THE
CHINESE GOVERNMENT

Chairman Hagel, Distinguished Members of the Congressional-Executive Commission on China:

In May 1990, I intervened, for the first time, on behalf of a political prisoner in China, raising the name of a student leader jailed during the spring 1989 political disturbances, at a banquet in Hong Kong with a Chinese minister. Later that month, I gave my first testimony to Congress, addressing the question of human rights and China's Most Favored Nation status (MFN). I have come back to Congress several times over the last 16 years to report on the progress of the dialogue with the Chinese government being conducted by me and my foundation, a dialogue that has seen me make approximately 100 trips to Chinese cities—75 to Beijing—to discuss cases, exchange information, visit prisons, and attend trials. Today I welcome the opportunity of briefing the Commission on recent developments.

MINISTRY OF JUSTICE STOPS ACCEPTING PRISONER LISTS

The framework for Dui Hua's dialogue with the Chinese government was established in November 1991 at a meeting in Beijing's Great Hall of the People between me and a member of the Standing Committee of the Political Bureau of the Chinese Communist Party, one of China's most senior leaders. From the outset, it was clear that an important focus of this dialogue would be prisoners. The senior leader stated that if a foreigner came to China, pounded the table, and demanded the release of a prisoner, the Chinese government would not respond. But if a foreigner came as a friend and showed respect, providing information on prisoners, indeed releasing them early, "was no big deal."

After this meeting, I began to visit prisons. The Ministry of Justice, which runs China's 700 prisons and 300 re-education through labor camps, began accepting my requests for information on prisoners in the form of lists of 20–25 names.

In April 1992 I was given an audience with a vice minister of the Ministry of Justice. I was advised that a decision had been made to accept any inquiries about prisoners that I might have, and to answer the inquiries to the best of the ministry's ability. I was invited to ask about any prisoner, and I asked about Wei Jingsheng. Then and thereafter I asked about many others.

During the first half of the 1990s, my dialogue with the Chinese government went smoothly. Getting information on prisoners was commonplace, and there were many releases of high-profile prisoners. At the time, Beijing was worried about losing its MFN trade status. In 1994, President Clinton de-linked China's MFN from its human rights record. Chinese officials had said that if the United States reduced its pressure, China would respond with human rights moves. I decided to take the Chinese government up on its offer. In December 1994, the Ministry of Justice for the first time sent a written reply to a prisoner list by fax, standard practice for the next 10 years. In January 1995, the State Council and the Ministry of Justice agreed to receive from me four lists of 25 names, one each quarter, in calendar year 1995.

In May 1995, the Chinese government suspended the prisoner information project because the State Department had granted a visa to Taiwan President Lee Tenghui. The Ministry of Justice continued to receive my lists, but contrary to what it had promised it was not willing to provide information. I turned to the U.S. Congress for help, and beginning in 1996 more than three dozen members of the House and the Senate, several of whom are distinguished members of this Commission, wrote letters to the Chinese government asking it to honor the commitment that had been

made. In 1997, Beijing badly wanted a state visit to the United States for Jiang Zemin. In October 1997, President Jiang made the visit, and in talks with President Clinton agreed to resume providing me with information about prisoners. The agreement was listed as an achievement of the summit in the statement issued by the White House, and was singled out in a Senate Resolution on the Jiang visit introduced by Senator Feinstein, a distinguished member of this Commission, and Chairman Hagel.

By early 1999, the Ministry of Justice had, for the most part, finished responding to 1995's list of 100 names, many of whom had been obscure prisoners hardly known to the outside world. Based on information provided on 70 percent of the names, more than half of the prisoners on the list had been granted early release or sentence reductions after the list's submission. Based on interviews with released prisoners and members of their families, I have no doubt that "the list of 100" played a significant role in securing early release and better treatment for dozens of people who would otherwise have been forgotten.

In April 1999, the State Department introduced a resolution criticizing China at the annual meeting of the U.N. Commission on Human Rights in Geneva. The Ministry of Justice again suspended providing information about prisoners to me. The next month, NATO warplanes bombed the Chinese embassy in Belgrade, and Beijing suspended the official dialogue on human rights with the United States.

The following year (2000), the Chinese government badly wanted to secure Permanent Normal Trade Relations (PNTR). It silently acquiesced in the establishment of this Commission as part of the effort to get PNTR. The Ministry of Justice began allowing me back into prisons and once more provided information on prisoners. By now, Dui Hua had been established, and we were engaged in a worldwide, open source search for the names of individuals detained in political cases. Our data base had been set up and our lists were becoming longer and more detailed. (A recent breakdown of our data base is appended to this testimony.) The information we received from the Ministry of Justice, which we shared with this Commission and with NGOs and governments engaged in rights dialogues, was increasingly valuable to an understanding of how China's penal system treated prisoners convicted in political cases.

In late July 2001, Secretary of State Colin Powell visited Beijing to help repair relations badly frayed by the EP3 incident. Agreement was reached to resume the official rights dialogue that had been suspended in May 1999 in the wake of the NATO bombing of the Chinese embassy in Belgrade. Secretary Powell tasked the newly confirmed Assistant Secretary of State for Democracy, Human Rights and Labor Lorne Craner with preparing for a round of the dialogue to be held in Beijing. Mr. Craner turned to Dui Hua and other NGOs to assemble a list of names of individuals detained in political cases (Dui Hua contributed the names of 50 "counterrevolutionaries"), and this list of 75 names was handed to China's Ministry of Foreign Affairs in the late summer of 2001.

After the terrorist attacks of September 11, 2001, the Chinese government made a strategic decision to side with the United States and to seek ways to exploit the new international environment to improve relations with the United States and achieve other foreign policy goals. As part of this decision, detailed information would be given on prisoners, and those identified by the United States as important cases would be granted early release. In October 2001, a session of the official human rights dialogue was held in Washington. Detailed information was provided on 68 of the 75 names on the list. Early releases of important prisoners began in January 2002. The first to benefit was the Tibetan ethnomusicologist Ngawang Choephel.

In the ensuing months, nearly all of the well-known prisoners on Mr. Craner's list—including Jigme Sangpo, Xu Wenli, Wang Youcai, Ngawang Sangdrol, and finally Rebiya Kadeer—were released from prison. Several were allowed to leave China for medical treatment. (I made two trips to Lhasa, accompanied by officials of the Ministry of Foreign Affairs, to verify that Tibetan prisoners wanted to leave for the United States.) Not only were well-known prisoners released. I recently looked at what had happened to the 60 people who were actually serving prison sentences in September 2001 when the Chinese response was being prepared. I am attaching a brief analysis to this testimony. Of the sixty, 27 have been granted early release, and four have been given sentence reductions. In other words, if you were on the list, you had a better than 50 percent chance of being released or given a sentence reduction in the ensuing five years. That's three times better than the rate of early release recorded for political prisoners that we know of who were serving sentences as of September 2001 but who weren't on Craner's list. (Unfortunately, the rate of parole and sentence reduction for political prisoners, even those on important lists, remains well below the rate for ordinary prisoners.)

How was this result achieved? Good cooperation with our Chinese counterparts, coordination with allied governments, steady follow-up (the names appeared on several subsequent lists handed over by Dui Hua, the United States and other governments), linking better treatment of prisoners to “rule of law” issues, and always emphasizing the need for human rights improvements, as measured in concrete terms, if US-China relations are to improve.

A little known example of how the Craner list was used to address a systemic issue is the two rounds of talks on sentence reduction and parole for prisoners serving sentences for counterrevolution and endangering state security that were organized by the State Department and the Ministry of Foreign Affairs in February 2004 and August 2005. In these talks, ably led by the State Department’s Bureau of Democracy, Human Rights and Labor and China’s Supreme People’s Court, Beijing affirmed that individuals serving sentences for counterrevolution and endangering state security enjoy the same opportunities for sentence reduction and parole as other prisoners. National reviews of sentence reduction and parole cases had begun on a trial basis in 2003 and they were expanded in 2004 and 2005. In 2005 Dui Hua heard reports that at the local level a policy of non-discrimination toward those convicted of counterrevolution and endangering state security was being followed. In January 2005, the Ministry of Foreign Affairs took the extraordinary step of e-mailing Dui Hua information on a large group of such prisoners, most of whose names were unknown, who had in fact been granted sentence reduction or parole in recent months.

My last meeting with the Ministry of Justice took place in April 2005. Senior officials of the Prison Administration Bureau and the Department of Judicial Assistance and International Affairs received me in the Minister’s Conference Room. It was an unusually friendly meeting. We discussed the possibility of Dui Hua hosting a delegation from the Prison Administration Bureau. I was asked to prepare a detailed proposal for the Ministry’s consideration. I handed over a short prisoner list. The senior representative of the Prison Administration Bureau promised that he would personally look into the cases. I was told that I would receive the desired information through the usual channel, that is, by fax or e-mail to my San Francisco office. Weeks and then months went by without Dui Hua receiving the information.

I visited Beijing in October 2005 and brought with me a detailed proposal on the delegation and a new prisoner list. I called the International Affairs Department of the Justice Ministry to schedule a meeting and was told that I was welcome “as an old friend” to visit the ministry but only if I agreed to three conditions: There would be no discussion of “human rights dialogues,” the names of “criminals” (i.e. prisoners) could not be raised during the meeting, and a prisoner list could not be handed over. I refused to agree to these conditions, and protested that the ministry’s new position was contrary to longstanding practice reaffirmed as recently as April. It ran counter to China’s policies of encouraging transparency and conducting dialogues based on equality and mutual respect.

I sought the assistance of China’s Ministry of Foreign Affairs. I discussed the situation with officials of the Departments of North American and Oceanian Affairs and International Organizations and Conferences, the U.N. missions in New York and Geneva, and the Chinese embassy in Washington. I am grateful for the work of several Chinese diplomats on this matter. I have recently been told that there is nothing personal in the decision to stop providing information on prisoners and that I am welcome to continue visiting China.

In February 2006, a senior Ministry of Foreign Affairs official advised me that I would get “good news” from the Ministry of Justice soon. I received information on a few prisoners channeled through the Ministry of Foreign Affairs. I was further heartened when President Hu Jintao visited Washington on April 20 and announced that China was prepared to “enhance” its dialogues and exchanges with the U.S. side in the area of human rights.

On August 24, 2006, I met with Ministry of Foreign Affairs officials in Beijing. I was informed that the Ministry of Justice had not changed its position. I was told that “people are fed up” with receiving prisoner lists from foreigners. Such lists represented attempts to interfere in China’s internal affairs and were disrespectful of China’s independent judiciary. Foreign countries have no right to submit them, and China is under no obligation to reply to them. When I sought an explanation for the Ministry of Justice’s decision to stop accepting lists and discussing cases, I was told that the Ministry of Justice is “unhappy and disappointed over how the information has been used.” Specifically, I was told that the impression had been given that prisoners were released early as a result of foreign pressure instead of as a result of “the normal workings of the Chinese legal system.”

At the meeting I asked the Ministry of Foreign Affairs to try one more time to convince the Ministry of Justice to change its position. I requested an update on a

set of nine prisoners, all of whom the Ministry of Justice had provided written information on, all longer than three years ago.

On September 14, 2006, I received the Ministry of Foreign Affairs' formal response: As the bilateral dialogue between the United States and China has not been resumed, discussion or exchange of information on individual cases is not appropriate. I was also reminded that the basic principle for the rule of law is independence of judicial organs, a principle the Ministry of Foreign Affairs and, it hopes, "our American friends" will observe.

DUI HUA RESPONDS

Since Dui Hua cannot accept the Ministry of Justice's new policy of "three no's"—no mention of human rights dialogues, no raising the cases of prisoners, and no prisoner lists—the foundation will no longer seek meetings with the Ministry of Justice in Beijing. The question will be revisited if and when the official human rights dialogue between the United States and China resumes.

Dui Hua holds that the Ministry of Justice's "three no's" policy overturns many years of cooperation that have enjoyed the support of leaders and senior officials of both the United States and China. The Ministry's behavior toward Dui Hua does not square with the policy of conducting dialogues based on equality and mutual respect. It is a setback for the principles of transparency and open governance, and calls into question President Hu Jintao's April 20 promise to enhance dialogue and exchanges on human rights between the two sides.

Dui Hua points out that the foundation is an international human rights organization that enjoys non-governmental consultative status with the Human Rights Council of the United Nations, a status that we would not enjoy had China chosen to oppose it. Although it actively supports dialogue on human rights between the Chinese and American governments (as it does the eight other official dialogues), Dui Hua's own dialogue is not dependent on the US-China dialogue and has never been viewed in such terms. On many occasions during long periods when the official dialogue was suspended (e.g. calendar year 2000), Dui Hua's own programs with the Ministry of Justice were plentiful and productive. If such things as prison visits and exchange of information on cases were appropriate then, why are they inappropriate now?

Dui Hua agrees that the basic principle of rule of law is independence of the judicial organs, but we fail to see how asking questions about cases represents interference. Underpinning the principle of independence is transparency and openness of the legal system. "In speaking about laws, proceed from an examination of cases 'yi an shuo fa,'" is a favorite saying of members of China's judiciary, and in its attempt to understand China's security, legal, and prison policies and systems Dui Hua is doing just that.

As for the question of how the information has been used, Dui Hua has reviewed all written communications from the Ministry of Justice since 1994, as well as the notes of meetings since 1991. It cannot find language asking that information be kept confidential, nor setting any other limits on how the information was to be used. On the contrary, there are several expressions of mutual esteem and desire for further cooperation. Prior to August 24, 2006, Dui Hua had never received a complaint from a Chinese official over how the information on prisoners had been used.

It is true that the impression has been given that prisoners who are the focus of international concern are more likely to receive better treatment than those who are not the focus of concern (a situation hardly unique to China), but the experience of the last 16 years tells me that interventions like my 1995 list and Mr. Craner's 2001 list have in fact prompted better treatment for many prisoners. That has been the case-until now, at least. Dui Hua is concerned that prisoners who manage to get information on their situations to the outside world-and their families- may be suffering consequences, including delays or cancellations of sentence reductions, denial of family visits and the like.

A WINDOW CLOSES, A WINDOW OPENS?

During the period of difficulties with the Ministry of Justice, Dui Hua has enjoyed good relations with Chinese courts, including the Supreme People's Court. The court has arranged for wide-ranging discussions with senior judges and staff of the court on such topics as sentencing and application of the death penalty. (Interestingly, individual cases were discussed and sometimes raised by the Chinese side. No judge has ever accused Dui Hua of "interference" for asking details of a case.) It made arrangements for Dui Hua to begin attending Chinese trials. We have been encouraged by the willingness of the courts to be more open and receptive to foreigners

and are looking forward to finding more ways to cooperate with both the court system and with China's procurators.

Of special interest to Dui Hua is the question of the availability of verdicts. Obviously, if verdicts become more widely available, the work of promoting transparency (and finding out about cases) would be greatly enhanced. At present, verdicts in many cases—including “sensitive ones” like those involving capital punishment, state secrets and juveniles—are not made available by courts and are even being denied to the families of those sentenced. The determination of what is “sensitive,” especially with regard to state security cases, is often in the hands of the police who make the arrest. The present system of withholding verdicts from the public is the subject of much debate in China, and there have been a few local experiments at making the publication and dissemination of verdicts less restrictive.

I was especially disappointed to read, therefore, that the Chinese government has promulgated new rules forbidding the release by courts of news related to “state secrets, business secrets and personal information, including in cases related to juveniles and those that are not tried publicly.” The rules, which have yet to be published, set up a new system of court spokesmen and stipulate punishment for court officials who leak information, which covers “any document passing through upper level and lower level courts.” This presumably includes verdicts, but Dui Hua is seeking clarification.

These rules come on the heels of other measures to restrict the operations of foreign news media and punish domestic media for unauthorized reporting on natural disasters and mass incidents. They are of a piece with the decision to shut down the prisoner information project with Dui Hua, and other actions the Chinese government has taken like harassing and jailing journalists, and closing down publications, web sites and blogs. I will briefly discuss the reasons for the ongoing clampdown in my oral remarks and will be happy to explore it further during the discussion period following our testimonies.

RECOMMENDATIONS

I would like to conclude this testimony with a few recommendations:

1. When and if the official dialogue between the United States and China resumes, consideration of a list of individuals detained for the non-violent expression of their political and religious beliefs must form a key element of it, as it has in all previous sessions. The State Department should have on hand a continuously updated list of prisoners that can be readily handed over to Chinese officials at short notice, and it should rely on the CECC's data base and Dui Hua's data base to prepare it.

2. In its dealings with the governments of countries that have human rights dialogues with China, the State Department should encourage the practice of asking about cases of concern in the form of prisoner lists, and push for greater sharing of information and other forms of cooperation. The Berne Process, a five-year-old grouping of countries that have dialogues and exchanges with China on human rights, has shown some modest results in these areas but has recently come under attack by the Chinese government. The State Department should make clear its support for the Berne Process, and raise the level of its participation in the group's meetings.

3. The State Department should examine ways to better utilize the United Nations system to bring cases of concern to the attention of working groups and thematic mechanisms, the International Labor Organization, and UNESCO. The United States should join the Human Rights Council at the earliest opportunity.

4. The Chinese government appears to have come to the conclusion that interest in human rights among people in Washington has waned and that issues like North Korea, Iran, and currency exchange rates are what occupy policy-makers and legislators. Reading press accounts of recent visits by Congressmen and Senators to China, I have been struck by how human rights is rarely if ever mentioned. I wonder if members are willing to bring prisoner lists to China, as they did in the past. I am confident that Senator Hagel and commissioners will take steps to disabuse the Chinese government of the notion that Members of Congress and the people they represent no longer care about the fate of prisoners of conscience in China.

5. It is vital that funding of open-source research and the data bases it feeds be maintained at least at present levels. I am troubled by reports that State Department funding for Dui Hua's data base might be reduced. I have brought with me two representative “finds” made recently in libraries in China, one giving the first-ever detailed statistics for executions carried out in a Chinese coun-

ty, the other giving details of a hitherto-unknown political party with more than 2,000 members operating in Henan Province. Its leaders are almost certainly still in prison. They are alone, but they are no longer unknown, and we will not forget them.

Thank you again for inviting me to testify today, and for the important work of the Congressional-Executive Commission on China. Dui Hua looks forward to even more cooperation with the commission in the future.

PREPARED STATEMENT OF MINXIN PEI

SEPTEMBER 20, 2006

Mr. Chairman and Members of the Commission:

Like many observers of developments in China, I have watched with increasing concern recent trends that indicate deterioration in human rights conditions and stagnant progress in strengthening the rule of law in China. To list a few examples, several eminent lawyers have been intimidated and prevented from representing their clients. A blind peasant activist has been falsely charged of crimes he did not commit and sentenced to lengthy prison terms. The media has come under increasing government control as well. Many urgently needed legal reforms, such as changing the way judges are appointed and courts are financed and supervised, have been put on shelf even though these measures will increase judicial independence and contribute to social stability.

While today's China is a much more kinder and gentler Nation than it was before reform, and we should give the Chinese people and the pro-reform forces in the government the credit for achieving such amazing progress in poverty reduction and expansion of personal freedom, we must recognize that the pace of improving political rights for Chinese citizens and strengthening the institutions of the rule law has lagged significantly behind the speed of economic progress. In recent years, the process of political liberalization has stalled even though the Chinese economy continues its rise.

In today's testimony, I will briefly focus on the underlying political causes for the deterioration of human rights and stalled progress in building a system based on the rule of law in China.

In my judgment, recent symptoms of rising social unrest and instability may be only a partial explanation for the government's intensified efforts of social and political control. The more important underlying cause for China's backslide on human rights and rule of law originates from a combination of factors that together reduce the ruling elites' incentive to pursue political reform while increasing their capacity for political control.

China has fallen into a classical transition trap at the moment. The current stage of transition, with half-finished economic reforms and partial political reforms, provides an ideal situation for the ruling elites who can maintain power with a mixture of political legitimacy derived from economic performance, political co-optation of new social elites, and increasingly effective methods of political control. Economically, strong growth record since Tiananmen has reduced the pressure on the Chinese government to pursue democratic reforms; indeed, it has even provided justifications for a hardline position on human rights. More important, because under one-party rule, China's political elites can easily convert their political power into economic wealth, they have even less incentive to permit greater political competition. It is obvious that democratic reforms will not only threaten their political monopoly, but newly acquired economic wealth.

At the same time, the Chinese government has been adapting itself skillfully to new social and economic changes. It has done so first by including social elites, such as professionals and intellectuals, into the ruling elites. In addition, it has also managed to co-opt new elites, especially private entrepreneurs. This strategy has eliminated challenge to the Party's authority from the most well-endowed and capable elements in Chinese society.

Over the last decade, the Chinese government has also greatly improved its capacity of suppressing both political dissident activities and social unrest. It has done so by heavy investment in law enforcement and technology. The strong capabilities, unfortunately, seem to have convinced the Chinese leadership that a tough approach to dealing with political dissent and social frustrations is a more effective way than political negotiation, compromise, and democratic reforms.

As long as this combination of factors persists, it is unlikely that human rights will improve significantly in China. Nor it is likely that the rule of law will be strengthened.

But the picture is not all that gloomy. Despite the Chinese government's unrelenting efforts to control the media and limit the growth of democratic forces, Chinese society is changing. Although it is not possible to form broad-based democratic opposition to challenge the authority of the Party openly today, the spread of personal freedom, the information revolution, and market forces is creating a more conducive environment for social pluralism. Therefore, I continue to urge a policy of critical engagement that can both advance American values and promote its national interests.

PREPARED STATEMENT OF XIAO QIANG

SEPTEMBER 20, 2006

THE RISE OF CHINESE BLOGOSPHERE AND INTENSIFIED CONTROL EFFORTS ON THE CHINESE INTERNET

Chairman Senator Chuck Hagel and Distinguished Commission members,

My name is Xiao Qiang. I am the Director of the China Internet Project, at the Graduate School of Journalism of UC Berkeley. It is a privilege for me to be speaking in front of this important commission, and alongside my distinguished fellow panelists. My talk today will focus on the growing information flow on the Chinese Internet, and the Chinese government's intensified control in this regard.

Over 130 million Chinese are now online, and 440 million cell phones are in use in the country. Over the last 18 months, two significant trends related to China's Internet development deserve our attention. The first is the explosive growth of the Chinese blogosphere and related new media technologies such as podcasting and photo/video sharing Web sites; and the second is pervasive and sophisticated government censorship, through legal and administrative regulations, together with surveillance, intimidation, imprisonment and propaganda measures. Today, I will provide some context and analysis for both phenomena, and also make recommendations to the U.S. government on policy implications.

The number of bloggers has increased so rapidly in the past two years that there exists no accurate count of their number. In January of 2005, China was estimated to have around 500,000 bloggers. According the latest survey from the official China Internet Network Information Center, there were about 28 million blogs in China by the end of July 2006. This is more than twice the number of bloggers in the United States. This significant growth is mainly due to the fact that all the main China Internet portals, such as Sina.com and Sohu.com, and other portal-like blog hosting services, such as bokee.com and Blogbus, started actively promoting blog applications among the over 130 million Chinese Internet users.

It is worth noting that all these Internet companies are funded through venture capital from the United States, and listed or aiming to be listed on the Nasdaq stock market. Development of the blogosphere is the result of both technology diffusion and Chinese government efforts to promote a knowledge-based economy in a global environment.

The unintended result, however, is the ability of Chinese citizens to create a public space to discuss public and political affairs, as well as creatively express themselves and buildup social networks online. Unleashed in a personalized, accessible, and inexpensive medium, Chinese netizens, especially urban intellectuals, students and white collar workers have begun to use the Internet as the primary place to voice their opinions on personal or public affairs. Despite government efforts to control the information environment and mass media, in the highly decentralized and diversified blogosphere, bloggers communicate political views in such a manner as to bring many "hidden transcripts," once suppressed, into the light of public consideration.

Mr. Chairman, Distinguished Commission members, online discussions of current events, especially through Internet bulletin board systems (BBS) and Weblogs, or "blogs," are having real agenda-setting power. The Chinese government has devoted enormous financial resources to set up government-sponsored Web sites at all levels of government, from national to regional and provincial. About 10 percent of all Web sites are directly set up and run by the government, until bloggers arrives in Chinese cyberspace. But these official sites have signally failed to gain the trust of the young, urban and educated netizens. On the contrary, people simply go to any number of independent BBS and blogs, to read what they think is interesting. Popular BBS such as Tianya community and Xic hutong, and individual bloggers, enjoy far more online popularity, and therefore real influence among netizens, than official Web sites such as Xinhua.com.

This leads to my second point: the Chinese government's intensified control of the Internet. The Chinese government's ongoing efforts to control speech online and in print has been well-documented. But a series of new measures show that official control of expression has reached a new height in recent months. These measures range from the Public Pledge on Self-Discipline for China's Internet Industry, regulation of news and information, Internet cafe management, domain name management and Web site real name registration. The Commission's new report did an excellent job in documenting those censorship measures. Let me just focus on two telling examples from an important component of Internet control: fear.

In January 2006, the Shenzhen Public Security Bureau created animated images of a pair of police officers named "Jingjing" and "Chacha," (from "jingcha," or police.) These images, which appear on Web sites of Shenzhen city offices and private Shenzhen-based companies, provide links to the Internet police section of the Public Security Web site. By June, the Chinese Ministry of Public Security created similar online police mascots that were put into operation in eight major cities in China.

According to the official Chinese E-Governance Net Web site: "The main function of Jingjing and Chacha is to intimidate. . . . The Internet has been always monitored by police, the significance of Jingjing and Chacha's appearance is to publicly remind all netizens to be conscious of safe and healthy use of the Internet, self-regulate their online behavior, and maintain harmonious Internet order together."

Another important method to monitor Internet activities is the use of real-name registration. In June 2006, the Ministry of Information Industry (MII) ordered all weblogs and Web sites to register with the government or face closure. This registration will impose a true-name system on Web site owners. After registration one must display the electronic verification mark in a specific location on the Web site, and must also link to the MII supervision system for making inquiries. By doing this the identity of the Web site owner will be immediately clear.

These examples reveal that the Chinese government has learned to turn the digital and transparent properties of Internet technology into a surveillance and intimidation tool to control its citizens' behavior. The underlining mechanism works to instill fear among netizens that they are being watched. Of course, these new technologically empowered control mechanisms are only effective when they are used together with intimidation in the physical space. In just the past two weeks, three cyber-dissidents—Zhang Jianhong, Yang Maodong and Chen Shuqing—have been arrested for their online publishing activities, according to the Paris-based Reporters without Borders. This combination of old-fashioned state control and the most advanced communication technology has a powerful chilling effect to enforce self-censorship in Chinese cyberspace.

Mr. Chairman, Distinguished Commission members, despite impressive economic growth over the last two decades, the Chinese Communist Party (CCP) faces a fundamental dilemma in that it wants to create an information-based economy, but lacks the political will to promote active political participation by Chinese citizens. The long-term survival of the CCP's power monopoly regime also critically relies on its ideological work and control of the information and symbolic environment.

But for China's one-party state, controlling the nature of the information available to its citizens has never been more difficult. Tens of millions of netizens are empowered by the new publishing platform. What's happening in the Chinese blogosphere is a power shift—not directly at the level of political institutions and law, but around the change of communication systems and the ability to shape the information and symbolic environment.

In the near future, we will see more and more efforts by the Chinese government to keep the information flow, online or off-line, under its control, using the mechanisms listed in the Commission's report, and mentioned in my presentation today. In the long term, however, I believe the Chinese censors are fighting a losing battle. The deeper problem here is that the Chinese Communist Party itself is morally bankrupt and intellectually exhausted. More regulations will not make official propaganda any more attractive or credible to Chinese netizens. Technological filtering and surveillance, real name registration, and even harsh police actions against political activists will not help the party gain legitimacy either. In my view, the rise of the blogosphere and other communication technologies such as cell phones and short text messages marks the beginning of the end of the CCP's ideological and propaganda control over Chinese society.

For this reason, in addition to close monitoring, more comprehensive and in-depth studies on the social and political implications of the Internet are crucial for the U.S.-China policymaking process. Will this pervasive, many-to-many and emergent communication platform play a critical role in democratizing China?—or will the Chinese Communist Party's one-party authoritarian regime ultimately domesticate Chinese cyberspace, turning it into an Orwellian monster? We need a better under-

standing of these questions if we want to understand this complex, rapidly changing and globally significant country.

I also want to bring the Commission's attention to another important document: "Race to the Bottom: Corporate Complicity in Chinese Internet Censorship," published by Human Rights Watch last month. The report documents the different ways in which American companies such as Yahoo!, Microsoft and Google are assisting and reinforcing the Chinese government's censorship system. The report also makes policy recommendations to both the U.S. government and companies on how to address this serious issue.

Finally, I encourage the U.S. government to be a more active player in developing and employing anti-censorship technologies, which will not only help Chinese people to gain direct access to information about U.S. government sponsored Web sites such as Radio Free Asia and VOA, but also can contribute to greater information flow and freedom of expression in Chinese cyberspace. Ultimately, it's the Chinese people themselves who want a freer Internet and a freer society. The Great Firewall, no matter how advanced its technology and how much fear the government tries to instill, will crumble, and much sooner than the Great Wall. Neither repression nor censorship will stop China from becoming a more open and humane society in the 21st century.

Thank you, Mr. Chairman.

OPENING STATEMENT OF HON. CHUCK HAGEL, A U.S. SENATOR FROM NEBRASKA,
CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

SEPTEMBER 20, 2006

The Commission issues a report each year to the Congress and to the President on human rights conditions and the development of the rule of law in China. In connection with today's release of the 2006 Annual Report, the Commission has asked a distinguished group of witnesses to assess the current state of civil rights and criminal defense; freedom of expression; and efforts to adopt democratic institutions of governance, implement legislative reform, and improve the environment for domestic and international civil society groups in China.

The Commission will also hear the perspective of the witnesses on how the United States might best engage with the Chinese government through dialogue on human rights and rule of law issues.

In its 2006 Annual Report, the Commission expresses deep concern that some Chinese government policies designed to address growing social unrest and bolster Communist Party authority are resulting in a period of declining human rights for China's citizens. The Commission identified limited improvements in the Chinese government's human rights practices in 2004, but backward-stepping government decisions in 2005 and 2006 are leading the Commission to reevaluate the Chinese leadership's commitment to additional human rights improvements in the near term. In its 2005 Annual Report, the Commission highlighted increased government restrictions on Chinese citizens who worship in state-controlled venues or write for state-controlled publications. These restrictions remain in place, and in some cases, the government has strengthened their enforcement.

The Commission notes the progress that the Chinese government has made over the past 25 years in beginning to build a political system based on the rule of law and on respect for basic human rights. The twin demands of social stability and continued economic progress have spurred legal reforms that may one day be the leading edge of constraints on the arbitrary exercise of state power. The government's achievements in the economic realm are impressive, none more so than its success in lifting more than 400 million Chinese citizens out of extreme poverty since the early 1980s.

While all of these changes are important, the gap between forward-looking economic freedoms and a backward-looking political system remains significant. There are leaders now within China who comprehend the need for change, and who understand that inflexibility, secretiveness, and a lack of democratic oversight pose the greatest challenges to continued development. These leaders will need to gather considerable reformist courage to overcome obstacles and push for continued change. Such changes will not occur overnight, but rather in ways that Chinese society, culture, infrastructure, and institutions must be prepared for and willing to accept.

To help us better understand human rights conditions and the development of the rule of law in China, we now turn to our witnesses.

Professor Jerome A. Cohen is a Professor of Law at the New York University School of Law; an Adjunct Senior Fellow on Asia at the Council of Foreign Rela-

tions; and Of Counsel at the law firm of Paul, Weiss, Rifkind, Wharton & Garrison. Professor Cohen is a leading expert on the Chinese legal system and the international relations of East Asia. As an attorney, he has long represented foreign companies in contract negotiations and dispute resolution in China and other countries in East Asia. As Director of East Asian Legal Studies at Harvard Law School from 1964 to 1979, Professor Cohen pioneered the study of East Asian legal systems in American legal curricula. He has published numerous books and articles on Chinese law, including "Contract Laws of the People's Republic of China;" "The Criminal Process in the PRC: 1949–1968;" and "The Plight of China's Criminal Defense Lawyers."

After Professor Cohen, we will hear from Mr. John Kamm. Mr. Kamm is Executive Director of The Dui Hua Foundation; a Member of the Board of Directors for the National Committee on U.S.-China Relations; and Director of Stanford University's Project in Human Rights Diplomacy. Since 1990, Mr. Kamm has been an advocate on behalf of prisoners of conscience in China and has made more than 70 trips to Beijing in an effort to engage the Chinese government in a dialogue on human rights. Mr. Kamm was awarded the Best Global Practices Award by former President Bill Clinton in June 1997. He was also granted the Eleanor Roosevelt Human Rights Award by President George W. Bush in December 2001 and a MacArthur Fellowship in September 2004. Mr. Kamm was the Hong Kong representative of the National Council for U.S.-China Trade from 1976 to 1981 and was president of the American Chamber of Commerce in Hong Kong in 1990.

Dr. Minxin Pei will provide perspectives on democratic governance and development of civil society. Dr. Pei is Senior Associate and Director of the China Program at the Carnegie Endowment for International Peace. Dr. Pei is an expert on China, U.S.-China relations, Taiwan, East Asia, and the development of democratic political systems. Dr. Pei is the author of numerous books and articles on China, including "China's Governance Crisis;" "Rebalancing United States-China Relations;" and "Future Shock: The WTO and Political Change in China." In his most recent book, "China's Trapped Transition: The Limits of Developmental Autocracy," Dr. Pei examines the sustainability of the Chinese Communist Party's reform strategy—pursuing pro-market policies under one-party rule.

Mr. Xiao Qiang will share his expertise on freedom of expression in China. Mr. Xiao is Director of the China Internet Project at the University of California at Berkeley. Mr. Xiao is a recipient of the MacArthur Fellowship and is currently teaching classes on "new media and human rights in China" at the University of California at Berkeley. Mr. Xiao was the Executive Director of Human Rights in China from 1991 to 2002. Mr. Xiao spoke at each meeting of the U.N. Commission on Human Rights from 1993 to 2001, and has lectured on the promotion of human rights and democracy in China in over 40 countries. Mr. Xiao currently runs the China Digital Times Internet news portal and is a weekly commentator for Radio Free Asia.

We welcome all of our witnesses today and appreciate their time and presentations.

PREPARED STATEMENT OF HON. JAMES A. LEACH, A U.S. REPRESENTATIVE FROM
IOWA, CO-CHAIRMAN, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

SEPTEMBER 20, 2006

Senator Hagel, I am pleased to join you and the Members of the Congressional-Executive Commission on China today for this hearing on the core issues in the Commission's mandate: human rights and the rule of law in China. Our session this morning is timely, as we have completed another year's work on these issues, as directed by Public Law No. 106–286. The culmination of our labors is today's release of the CECC Annual Report for 2006, which is also required by the statute.

I hope that our witnesses this morning can assess for us the short and medium-term trends on several key issues of specific concern to the Commission: the current state of freedom of expression and the free flow of information; criminal and civil rights defense; and government transparency in providing information about prisoners of conscience. Each of our witnesses has the background and experience to provide us with insights on efforts to implement legislative reform, and improve the legal and operational environment for domestic and international civil society institutions in China. Mr. Chairman, the United States has pursued a policy of engaging in discussion and dialogue with the Chinese government on human rights and rule of law issues, and the views of our witnesses on how best to achieve success in such a dialogue would be most welcome.

I would also like to recognize the dedication and hard work of the CECC staff. These 15 professionals have excellent Chinese language skills, deep understanding of Chinese history and culture, great sympathy for the Chinese people, and a passionate dedication to human rights and the rule of law. From the youngest research associate to the most experienced senior counsels, this group has focused its energies on advancing our knowledge about the issues in our mandate, and have prepared a superb report for us again this year.

Mr. Chairman, China's growing role in regional and international affairs is a result and a recognition of the impressive economic and social development in China since the "reform and opening up to the outside world" period began in the late 1970s. When this period of remarkable change began, the People's Republic of China had a minuscule national economy, negligible international trade, no system of laws, and by most objective measures was among the least developed countries in the world in economic, political, and social terms. The achievements of the Chinese people are such that, to quote a December 2005 report by the Dui Hua Foundation headed by John Kamm, one of our witnesses today, "... China is, in most respects, a more well-off, open, and free place than it has been in modern history."

Yet China has far to go to complete its reforms, and has yet to address in a comprehensive way the need for a model of democracy that can ensure that these achievements will continue and take that nation's development to the next level and beyond. Significant problems loom ahead that may undo some or all of China's great progress. Chinese citizens who challenge government and Communist Party controls on religion, speech, or assembly continue to face severe official repression, with the government frequently using methods that violate not only China's own Constitution and laws, but also internationally recognized human rights standards. The Chinese Communist Party continues to dominate political life in China, with Party organizations formulating all major state policies. Most often these policies are designed to protect the Party's rule.

Many of the new laws adopted by the National People's Congress have proven difficult or impossible to implement in practice at the provincial and local levels. In the area of international trade, the government tolerates very high rates of infringement of intellectual property rights. In commercial and civil law, court judgments are often difficult to enforce. Labor laws related to workplace health and safety, overtime, and payment of overdue wages are most often honored in the breach, resulting in widespread worker protests.

Chinese leaders seem deeply worried about growing social unrest, which often is the result of official corruption, development projects that pollute the environment, government eviction of urban and rural residents from their land for new building projects, poor workplace conditions in many Chinese mines and factories, and unpaid wages and pensions. In addition, an underfunded public health system cannot offer ordinary care to most citizens, and is dangerously incapable of coping with the sudden health crises of a globalized world, such as HIV/AIDS, SARS, and avian influenza. As a result, many Chinese citizens have lost confidence in the Communist Party and the government. As the 21st century advances, the impact of these and other problems could precipitate the worst nightmare for China's leaders: widespread unrest, possibly social and political chaos.

For basic democracy to work anywhere, citizens need freedom of expression and a free flow of information, so that, for example, public health crises such as HIV/AIDS or SARS can come to light without delay; so those injured by state officials or policies can safely speak out and organize to oppose them; and so that those harmed by corrupt or incompetent officials can blow the whistle and begin legal procedures to remove them without fear of retribution. In this connection, the trend lines are troubling: over the past year or more, the Chinese government has become less tolerant of public discussion of central government policies. Restrictions have tightened on journalists, editors, and Internet Web sites, and officials frequently harass, intimidate, and imprison journalists, editors, and writers.

Mr. Chairman, I believe that whether the 21st Century is peaceful and prosperous will depend on whether the world's most populous country can live with itself and become open to the world in a fair and respectful manner. In a globalized world in which peoples everywhere are seeking a sense of community to serve as a buttress against political and economic forces beyond the control of individuals and their families, mutual respect for differences is the key to peace and prosperity.

From an American perspective, the assumption is that China's economic and social system cannot develop to its fullest unless the rule of law and its associated rights—including freedom of religion, speech, and of the press, due process for disputes over private rights and also contractual obligations, and a judiciary that efficiently and fairly adjudicates disputes—are made central tenets of Chinese life and the normal experience of the Chinese people.

I look forward to learning from our witnesses whether or not they believe China is closer to that goal today.
Thank you.

PREPARED STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM KANSAS,
MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

SEPTEMBER 20, 2006

Thank you for holding this hearing, Mr. Chairman, and for assembling a distinguished panel of witnesses. Today the Commission is releasing its annual report and yesterday, the members of the Commission, including myself, had the opportunity to cast our votes. I did not approve this year's report and I would like to take just a few minutes to explain why.

Back in 2000, almost exactly six years ago today, the Congress granted permanent normal trade relations with China. PNTR was considered not only the best economic deal for the United States, but also was seen as one of the best ways to support reform in China. One of the key provisions of the PNTR bill was the creation of this Commission to act as the watchdog on China human rights. By statute, the Commission is charged with monitoring the broad human right's situation in China and it does this by holding hearings, conducting research, and management of a critical data base on prisoners. The Commission also is required to publish an annual report that is designed to guide U.S. policy toward China based on its human rights record.

In my opinion, this report does not meet that goal. The Commission staff has done an incredible job pulling together a strong and compelling narrative with over a thousand footnotes on what has happened over the past year in the specific areas of concern in China. And the continuing human rights abuses they have reported are very troubling.

The report is weak however, in the conclusions it draws and the recommendations to the executive and legislative branches. What troubles me is the scorecard mentality we take toward human rights in China—one activist released but two arrested. One new law passed, three more laws completely ignored. It's not clear to me if such an approach gives us a broad view of the state of human rights in China today.

I believe that any discussion of regression or progress in China has to address the fundamental issue of China's one-party dictatorship. Without recognition of the centrality of this fact, we are left treating the symptoms but not the disease.

We should not hesitate to call a spade a spade. We should not hesitate to say explicitly that the fundamental obstacle to true reform in China is the Chinese Communist Party because the Communist Party continues to control all facets of Chinese political and social life. This type of one-party dictatorship prohibits the functioning of an independent judiciary, freedom of expression and the development of other freedoms enjoyed by citizens in a liberal democracy. Absent reforms in the political and civic spheres in China, incremental legal, social and economic reforms detailed in this report will never lead to true human rights or rule of law in China.

And what does this mean for U.S. policy? It means we can't be fooled into believing that years of rule of law training will in and of themselves lead to the development of rule of law in China. External aid cannot substitute for internal will to reform. What China has now is the Communist Party's "rule by law" and this will not be supplanted with "rule of law" without fundamental change in the one-party structure of control by the Communist Party.

Recently China has started rounding up and jailing lawyers who are simply trying to use China's own system of laws to fight for the rights of ordinary citizens. These are not protestors throwing Molotov cocktails hoping to overthrow the government. These are principled men and women who simply want to use the tools supposedly given to every Chinese citizen to exercise their rights under the Chinese legal system. Apparently even that goes too far for the Party and these rights defense lawyers are being harassed, beaten, arrested and sentenced to lengthy prison terms. One of these brave activists, Wang Yi, summed it up succinctly: "If even the rights defense movement cannot succeed, then there is really no hope for China."

The relationship between rule of law and human rights is inviolable. We will not see an improvement in human rights without the rule of law in China. If we truly want to see change in China, we need to engage the Chinese on the most fundamental issue—their one-party dictatorship and the need for true political reform that will bring about a representative democracy. This is what the Commission should be advocating and where recommendations to drive U.S. policy toward this

end would be most effective. This is what is missing in this year's report and what I hope to see in next year's report.

I would like to ask that my full statement be made a part of the record. Again, thank you Mr. Chairman for convening this hearing and I look forward to hearing from the witnesses.

PREPARED STATEMENT OF HON. STEVEN J. LAW, DEPUTY SECRETARY OF LABOR,
MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

SEPTEMBER 20, 2006

Thank you, Mr. Chairman.

I would like to commend the staff of the Commission for their diligent work in producing the 2006 Commission Annual Report on human rights conditions in China. It is important to note both the progress China has made over the last year—as a result of both advocacy and engagement by the United States and by members of this Commission—and acknowledge the challenges we still face in the areas of human rights and political freedom in China.

In its 2005 Annual Report, the Commission identified several problematic areas relating to labor conditions in China. Among them:

- Wage and pension arrears are among the most important problems that Chinese workers face, and
- Workplace health and safety conditions are poor for millions of Chinese workers.

As the 2006 Annual Report notes, over the course of the past year, the U.S. Department of Labor continued to engage China to implement bilateral cooperative activities to address these challenges. During the year, we provided training to Chinese officials who are responsible for enforcing the Chinese labor code. We educated company managers on worker rights and work safety. We also provided education and legal aid to migrant and women workers who are among the most vulnerable population in the workforce.

I would like to highlight a few indicators of the achievements resulted from such bilateral cooperation:

- As of April 2006, the Rule of Law project trained 8,522 participants (migrant workers, management representatives, and government inspectors) and produced 153,000 worker awareness publications to publicize wage and hour laws and other labor regulations.
- 1,150 workers received counseling services.
- Among the migrant workers participating in the project, the percentage of workers able to list three or more workplace rights increased to 96 percent in the first quarter of 2006, up from 23 percent in 2005.
- The Rule of Law project is assisting in the drafting of China's first Employment Contract Law, which is expected to improve worker protection and reduce the conflicts and inconsistencies between laws that impede the enforcement of existing labor regulations.
- At the coal mines participating in a DOL project, the number of injuries per 1,000 miners decreased from 7.7 in 2003 to 1.86 in the first half of 2005.

While acknowledging these positive developments, we still face several challenges in our engagement with China on worker rights and labor standards. Some of these challenges are daunting. We call on the government of China to fully respect international labor standards and the principles embodied in the ILO 1998 Declaration on Fundamental Principles and Rights at Work. These principles include:

- The elimination of all forms of forced or compulsory labor;
- The effective abolition of child labor; and
- The elimination of discrimination in respect of employment and occupation.

The 2006 Annual Report that we are releasing today finds that there is “an increase in the number of labor disputes” in China.

Today, China is at a critical juncture with a significant rise in strikes, marches, demonstrations and mass petitions. The Department of Labor is currently working with China to address the challenges in employee-employer relations:

- Through the Rule of Law project and working with Chinese government, researchers and enterprises, China completed the first comprehensive baseline survey on labor dispute resolution in April of this year;
- The survey report, along with a list of recommendations, serves as a much needed reference in drafting China's Labor Dispute Resolution Law, which is reportedly to be ready for consideration this year;

- Over the last year, the project set up labor-management committees at 15 selected enterprises in China and provided training to committee members on ways to handle workplace disputes; and
- The project is testing training materials for government mediators on labor dispute resolution techniques. Training is expected to begin in November.

Thank you, Mr. Chairman, for the opportunity to note the positive development in the labor areas in China and the continued work that needs to be done in these areas.

PREPARED STATEMENT OF FRANKLIN L. LAVIN, UNDER SECRETARY OF COMMERCE,
MEMBER, CONGRESSIONAL-EXECUTIVE COMMISSION ON CHINA

SEPTEMBER 20, 2006

Thank you, Chairman Hagel, Co-Chairman Leach, Senators, Congressmen and fellow members of the Commission. I commend the staff for its excellent work on the 2006 Annual Report on human rights conditions and the development of the rule of law in China. I also thank the distinguished group of witnesses gathered today to discuss the current state of freedom of expression, criminal and civil rights defense, and government transparency in providing information about prisoners of conscience in China.

For more than 25 years, the United States has pursued a policy of open commercial exchange with China. We have encouraged Chinese leaders to embrace market principles and welcomed China into the global economy. We supported China's accession to the World Trade Organization. We have an optimistic goal of a stable and prosperous partnership between America and China that will be better achieved with China fully participating in the international trading system.

Economic cooperation between the United States and China has greatly benefited both countries and we believe that the dynamic growth that China has realized through free trade and will work for our mutual benefit in the future. With this in mind, we also believe that there is a relationship between open economies and open societies and expect that economic progress is likely to be accompanied by progress in human rights and the rule of law.

Indeed, we approach this Commission with a fundamental belief that progress in human rights and the rule of law are essential for China to maintain its economic progress. We also have a fundamental concern about the relationship between commercial rights of U.S. companies and individual rights. Further, we want U.S. companies to be good corporate citizens in their overseas activities, respectful of the rights of workers and other stakeholders. We must measure how well and how transparently China treats both companies and individuals under the law. We are also concerned about the role of U.S. companies doing business in China as well as how China treats these companies. How these companies perform in their dealings with the Chinese government and in the Chinese commercial environment has a bearing on future progress in human rights for Chinese citizens.

